

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11297 OF 2014

Chinchwad Shikhshan Prasarak Mandali
through its reporting Trustee
Shri. Nilkant Gangaram Chinchwad .. Petitioner

vs.
Shri. Suresh D. Chinchwade and ors. .. Respondents

Mr. S.V. Pitre for the Petitioner.
Mr. Raju Yamgar for Respondent No.1.
Ms Aparna Vhatkar, AGP for Respondent Nos.2 and 3.

CORAM : M. S. SONAK, J.
DATE : 6 JANUARY, 2015.

P.C. :-

1] This petition challenges the order dated 3 December 2014 made by the Dy. Charity Commissioner, Pune Region, Pune, declining the petitioner's request to return to the police the documents collected by them in the course of investigation and further to discard the evidence of Shri. J.S. Landge, Chief State Examiner, CID Pune in the matter of proceedings securing a Change Report.

2] Admittedly, by order dated 12 November 2013, the Dy. Charity Commissioner issued a witness summons to Shri. J.S. Landge, the Chief State Examiner to produce documents and further be examined in respect of certain documents alleged to have

been fabricated. No challenge was raised by the petitioner to the issuance of such witness summons.

3] Thereafter, in pursuance of the witness summons, Shri. Landge appeared before Dy. Charity Commissioner and was examined on 6 February 2014 and 7 October 2014. Shri. Landge was partly cross-examined on 14 November 2014 and the matter stood adjourned to 24 November 2014. On the said date, the petitioner moved the application urging Dy. Charity Commissioner to return the documents obtained/prepared during the course of investigation to the police and further the entire testimony/evidence of Shri. J.S. Landge be discarded.

4] Mr. Pitre, learned counsel for the petitioner, by placing reliance upon the order made by this Court on 2 December 2011 in Criminal Writ Petition No. 2394 of 2011 submitted that this Court has already held that Charity Commissioner whilst deciding the applications for Change Report had to advert to the record placed before them and not be influenced by any documents/evidence, which forms a part of criminal proceedings that may be pending before the competent Court. Mr. Pitre, learned counsel contended that if the documents which form a part of the criminal proceedings

pending against the petitioner are taken into consideration by Dy. Charity Commissioner, then in that event, the petitioner would be very seriously prejudiced not only in the proceedings for Change Report but also in the pending criminal proceedings. Mr. Pitre further submitted that such a course of action would be in breach of the ratio of the order made by this Court on 2 December 2011 in Criminal Writ Petition 2394 of 2011.

5] In my judgment, the Dy. Charity Commissioner has rightly rejected the petitioner's application under Exhibit -56. This is not a case where some documents or evidence tendered in the criminal proceedings is sought to be *ipso-facto* relied upon by the Dy. Charity Commissioner. Rather this is a case where at the request of the parties a witness summons came to be issued to Shri. Landge, who happens to be the Chief State Examiner, Pune. In pursuance of the witness summons, Mr. Landge has appeared before the Dy. Charity Commissioner and deposed to the documents. The circumstance that Mr. Landge is also a part of the investigation team and may be called upon to depose in the criminal proceedings, is clearly irrelevant in the present context. Consequent upon, Mr. Landge deposing before the Dy. Charity Commissioner, such deposition and the documents produced by Mr. Landge

constitute the record before the Dy. Charity Commissioner. The order of this Court, upon which Mr. Pitre places reliance also requires the Charity Commisioner to decide the proceedings for Change Report, on the basis of record placed before the said authority, rather than be influenced by the fact that writ petition was pending or that the investigation was proceeding and the police report being filed in the concerned Court. The Dy. Charity Commissioner in the present case, has rightly distinguished the order made by this Court.

6] There is yet another circumstance on account of which the impugned order warrants no interference. Consequent upon the appearance of Mr. Landge as a witness, not only as his examination-in-chief concluded, but further the said witness was also partly cross-examined, as has been recorded in the impugned order. This means that an opportunity of cross-examination was afforded to the petitioner, which opportunity has been at least partially availed by them. Clearly, therefore, the petitioner cannot be permitted turn back and seek to discard of the entire evidence of Mr. Landge.

7] The petitioner seeks to misinterpret the order made by this Court in Criminal Writ Petition No.2394 of 2011. In the first place, the order upon which the petitioner placed reliance, is an interim order. Secondly, in making the order, this Court was concerned with situation wherein the petitioners might have been prejudiced in their criminal trial and therefore, observed that the proceedings before the Charity Commissioner ought to be decided expeditiously and until then the criminal trial was to remain suspended. In the present case, we are really not concerned with a situation of that nature. In fact, the order dated 2 December 2011 supports the approach of the Dy. Charity Commissioner in proceeding with the proceedings for Change Report and for that purpose taking into consideration the record before it. Consequent upon Mr. Landge deposing before Dy. Charity Commissioner and producing the documents in the course of deposition, such deposition as well as documents would clearly constitute records before the Dy. Charity Commissioner.

8] In view of the aforesaid, I see neither any jurisdictional error nor any miscarriage of justice in the impugned order or as a consequence of the impugned order.

9] No case is, therefore, made out to warrant interference with the impugned order. Petition is, therefore, dismissed. No order as to costs.

(M. S. SONAK, J.)

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