**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1754 OF 2007

1. Shrirang S/o Gopikrishna Agrawal (died) (deleted).

2. Motiram S/o Palturam Agrawal, Age. 70 years, Occ. Business, R/o. Jalna.

3. Damodhar s/o Shrikrishan Bhartia (died) (deleted) **..PETITIONERS..**

VERSUS

1. State of Maharashtra.

2. J.G. Dorle, Age. 40 years, Incharge Asst. Charity Commissioner Jalna, Through Superintendent P.T.R.O. Assistant Charity Commissioner's Office, Satkar Complex, Jalna.

3. Joint Charity Commissioner, Near Baba Petrol Pump, Adalat road, Aurangabad. **..RESPONDENTS..**

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Advocate for Applicants: Mr D S Bharuka
APP for Respondent/State: S P Tiwari

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CORAM : V.K. JADHAV, J.
Dated: December 6, 2016

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ORAL JUDGMENT :

1. By this criminal application, the applicants/original accused has challenged the order of the learned Chief

Judicial Magistrate, Jalna dated 11th May, 2006 passed in R.C.C. No.726 of 2005 issuing the process thereby against the Applicants/Accused for the offence punishable under Section 41 (c) (2) read with 67 and 83 of the Maharashtra Public Trust Act, 1950 (hereinafter referred to as 'the Act of 1950') and the judgment and order dated 15th February, 2007, passed by the learned Ad-hoc Additional Sessions Judge, Jalna, in Criminal Revision No.99 of 2006 confirming thereby the order passed by the learned Magistrate of issuance of process, as aforesaid.

2. Brief facts, giving rise to the present criminal application, are as follows :-

The then in-charge Assistant Charity Commissioner has filed a complaint against the Petitioners and others for having committed offence punishable under Section 41(c)(2) read with 67 of the Act of 1950. The present Applicants and the other Accused are Members of Agrawal Samaj, Jalna and on the basis of the complaint filed by one Kachrulal Dhanuwala, the learned Assistant Charity

Commissioner has directed an inquiry into the matter. It has alleged in the said complaint by Mr. Kachrulal that even though a huge amount was collected on one occasion during the period from 16th April, 2005 to 17th April, 2005, no proper accounting was done and the amount was misappropriated. Even though the In-charge inspector has issued a notice, present Applicants and other accused persons did not appear before him. Thus on 26th October, 2005, the Charity Commissioner, Maharashtra State, Mumbai, directed one Mr. Kachre, Superintendent of office of Complainant, to conduct an enquiry in the matter and submit a report. Said officer had conducted an enquiry and submitted the report on 3rd December, 2005. The Joint Charity Commissioner, Aurangabad, while exercising the powers conferred on him, has accorded sanction to prosecute the accused for the offence of breach of the provisions of Section 41 (c) (2) punishable under Section 67 of the Act of 1950. Consequently, the In-charge Assistant Charity Commissioner, Jalna has lodged the complaint before the Judicial Magistrate First Class, Jalna, against the present Applicants, who are original Accused Nos. 1, 2 and 5 and two more. By impugned order dated 11th May, 2006, the learned Magistrate issued process against the Applicants and the remaining Accused. Being aggrieved by the same, Applicant No. 3 herein alone preferred Criminal Revision No.99 of 2006 and the learned Ad-hoc Additional Sessions Judge, Jalna vide judgment and order dated 15th February, 2007, dismissed the said revision. Hence, this criminal application.

3. The learned counsel for the applicant submits that, during the pendency of the present criminal application, the applicant nos. 1 and 3 died. Thus, matter abates against them and their names be deleted from the array of the applicants forthwith.

4. The learned counsel for the applicant submits that, the applicants on 27.1.2005 filed an application before the Assistant Charity Commissioner, Jalna under section 41 (c) of the Act of 1950 for grant of permission for collecting the donation for the aforesaid programme of Provincial Convention and Parichay Sammelan at

Jalna. Learned counsel submits that the Assistant Charity commissioner by order dated 28.1.2005 has granted permission in terms of the provisions of Section 41-C of the Act of 1950 with certain directions. Said permission is produced on record and the same is marked as Exh.D page 27 which is not disputed by the other side. In terms of the said permission, the applicants have been directed to get the accounts audited through the registered auditor and further directed to submit the previous year report, if any, alongwith the names and addresses of the office bearers. It was further directed that, printed receipts are necessarily to be issued for collection of the donations and maintain expenditures vouchers. Learned counsel submits that, it has no where mentioned in the said permission that, the applicants should submit the report within 15 days after completion of said programme for which permission to collect donation in terms of section 41-C of the Act of 1950 was granted. The learned counsel submits that, on the basis of certain complaints, though inquiry was initiated during the course of the said inquiry, the applicants have submitted the report of registered auditor pertaining to the account maintained by the applicants in respect of said programme, however, inquiry officer has added many things in the inquiry report even though registered auditor had not observed and remarked any irregularity in the account maintained by the applicants so far as event for which permission was sought from the authority under the provisions of 41-C of the Act of 1950 is concerned. Learned counsel submits that, Jt. Charity Commissioner has not at all given reference to the report submitted by the registered auditor and further observed that the applicants have failed to file copy of the balance sheet and duly audited income and expenditures to the Assistant Charity Commissioner, Jalna. Learned counsel submits that, said observations in the sanction order is contrary to the record. Learned counsel submits that, even on perusal of the inquiry report, which has been produced on record before this Court by the respondent-original complainant, it appears that, inquiry officer himself has admitted that the entire amount collected by way of donations shown in the audit report and further applicants have obtained approval of General Body meeting of Agrawal Samaj of income and expenditure for the said event. Learned counsel submits that, the Courts below have given undue weightage to the observations made by the Inquiry Officer which is contrary to the record and reports submitted by the registered auditor. Learned counsel submits that, the impugned order thus liable to be quashed and set aside.

5. Learned A.P.P. for the respondent-State submits that, while granting permission under the provisions of Section 41-C of the Act of 1950, the learned A.C.C. Has directed the applicants should submit the accounts and audit report within 15 days from the completion of the object specified in the application no.3/2005. Learned A.P.P. Submits that, said fact was suppressed by the applicants in the present criminal application. Learned APP submits that applicants failed to submit audit report as per the conditions imposed and since office has received two complaints by one Kacharulal Dhanwala, inquiry was directed through the office Superintendent. It was found in the said inquiry that

the applicants had not maintained the account nor submitted audit report. The learned APP submits that, on 11.10.2005 the applicants submitted audit report in the office. Said report is filed after stipulated period of 15 days. Thus, by order dated 6.12.2005 the then Assistant Charity Commissioner, Jalna ordered the report of inquiry to be put up before the Ld. Joint Charity Commissioner, Aurangabad for consideration and necessary action. The learned Jt. Charity Charity Commissioner Aurangabad, while exercising powers conferred on him under section 83 of the Act of 1950, by order dated 6.3.2006 has accorded sanction to prosecute the present applicants for the breach of provisions of section 41-C (2) punishable under section 67 of the Act of 1950. The learned APP submits that, the applicants cannot seek any immunity from prosecution on the ground that they have subsequently filed audit report. The learned A.P.P. has also accepted that, even the audit report, if, submitted at the later time can be accepted by imposing costs. The learned APP submits that there is no substance in the criminal application and the same is thus liable to be dismissed.

Section 41-C of the Act of 1950 reads as under :-

> *"**41C.** Persons (other than Public Trusts) collecting moneys, etc. for religious or charitable purpose to inform Charity Commissioner of such collections forthwith etc.:-*
>
> *(1) Any person, (not being a public trust registered under this Act) collecting any money subscription, donation or other property for religious or charitable purpose shall forthwith inform the Charity commissioner in writing of such collection and the purpose for which such collection is made.*
>
> *(2) On receipt of such information, the Charity Commissioner may, on making such inquiry as he deems fit, permit such collection to be continued subject to such condition as he deems fit, or may, after recording his reasons in writing in that behalf direct such person to stop making such collection forthwith and require such person to render an account of the collection made by him.*
>
> *(3) It shall be the duty of every such person to comply with the directions or any order made by the Charity Commissioner under sub-section (2)."*

6. It is thus clear that the persons other than Public Trusts if collecting moneys etc., for any religious or charitable purpose, required to inform the Charity Commissioner of such collection forthwith and on receipt of such information, the Charity Commissioner may permit such collection to be continued subject to such condition as he deems fit.

7. In the instant case, the applicants have filed an application bearing No.3/2005 quoting there in one event of Parichaya Sammelan of Agrawal Samaj and

thus, sought permission from the Assistant Charity Commissioner for the collection of the donation of the said event to be scheduled on 16.4.2005 and 17.4.2005. The learned A.C.C. Jalna by order dated 28.1.2005 Exh. D granted permission with certain condition. Those conditions reads as under :-

> 1]. The applicant shall issue printed receipts for collection of such donations and further maintain expenditure vouchers.
>
> 2]. The applicant shall get the accounts audited through the Registered Auditor if donation exceeds amount of Rs.15,000/-.
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> 3]. The applicants have been directed to submit the last year accounts, if any, and to further submit the names and addresses of the office bearers of the next year.

8. Further, by way of additional conditions, the applicants have been directed to submit the accounts within 15 days after event is completed.

9. It further appears from the documents submitted alongwith the affidavit-in-reply filed by the respondent no.2-original complainant that, on 21.4.2005 and 25.4.2005 one Mr. Kacharulal Dhanwala had filed complaints before the Assistant Charity Commissioner, Jalna about irregularity in the donations collected by the applicants for the said event and also complained that no proper accounts are maintained by the applicants. Consequently, inquiry was directed and accordingly, the Superintendent of A.C.C. Office, Jalna has conducted inquiry into the matter. Inquiry report in respect of those complaints is submitted alongwith the affidavit-in-reply and marked at Exh.R-3. On perusal of the same, it appears that, inquiry officer has acknowledged that registered auditor has submitted the report in respect of the accounts maintained by the applicants for the said event. It is further matter of record that the registered auditor have not observed anything about any irregularity in the accounts maintained by the applicants in collection of the donations for the said event and expenditure incurred thereof. Even, the Inquiry Officer has accepted that amount of Rs.9,66,807/- collected by way of donations shown in the audit report. The Inquiry Officer has also observed that there is no substance in the allegations made by the said Kacharulal in this regard. The Inquiry Officer has observed that, on 11.7.2005 meeting of the

Agrawal Samaj was called and income and expenditure of the said event has been approved by the General Body of Agrawal Samaj. Inquiry officer has merely shown his suspicion as expenditure vouchers were not shown to him during the course of inquiry. However, it appears that, the inquiry officer has not at all considered the audit report submitted by the registered auditor. It is the part of the record that auditor has not noticed any irregularity in the accounts maintained by the applicants in respect of the said event.

10. In the instant case, the applicants-original accused have submitted the report of the auditor Exh.H (page 32). The said Auditor's Report has been referred by the Inquiry Officer, on whose inquiry report sanction was accorded by the Jt. Charity Commissioner and accordingly, the complaint which is subject matter of the present criminal application was filed before the learned Magistrate. It cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence. This should be done in very rare case, i.e. where the defence

produced some material which convincingly demonstrates that whole prosecution case is totally absurd.

In the instant case, since the auditor report has been referred by the inquiry officer, I have gone through the same minutely. The auditor's report placed on record alongwith present criminal application. On perusal of the same, it appears that the auditor has remarked that all the books, deeds, accounts, vouchers, other documents on record required by the auditor were produced before him. Further, it has specifically mentioned in the income side account that there is specific entry about donations in cash or kind to the tune of Rs.7,96,337/-. Further, on the expenditure side, expenses are mentioned under various heads including catering expenses, Mandap Lighting decoration, Memento expenditure, Parichay Book, printing and stationary, telephone diary, travelling expenses, coin purchase, goods purchase etc. The inquiry officer has also given reference to receipt of the amount under donations as mentioned in the audit report.

11. It appears that the applicants have not submitted the accounts within 15 days as directed by the learned Assistant Charity Commissioner while granting permission under section 41-C of the act of 1950. However, it is further a part of record that office of the Assistant Charity Commissioner, Jalna has accepted audit report submitted by the applicants and thereafter, the aforesaid inquiry was concluded. It is not the case that the office of the A.C.C. Jalna has not accepted said audit report as filed beyond the period of 15 days. In terms of provisions of Section 41-C and other mandatory provisions about the accounts to be maintained by the Public Trust or the persons other than Public Trust, there is no violation of the said provisions as such and the applicants are subjected to criminal prosecution only for the reason that, the accounts though duly audited by the registered auditor, came to be submitted beyond period of 15 days before the authority concerned.

12. In view of the above observations, in my considered opinion, whole prosecution case is totally

absurd and continuation of the prosecution would be the abuse of the court process. Both the courts below have not considered this aspect. Even, sanction order passed by the Charity Commissioner is contrary to the record maintained by the office of the Assistant Charity Commissioner, Jalna.

13. In view of this, I inclined to allow this criminal application. Hence, following order.

ORDER

I. Criminal Application is hereby allowed.

II. The order dated 11.5.2006 passed by the Chief Judicial Magistrate, Jalna in S.T.C. No.726/2006 and confirmed by the Adhoc Additional Sessions Judge-2, Jalna in Criminal Revision No.99/2006 are hereby quashed and set aside.

III. The complaint S.T.C. No. 726/2006 is hereby dismissed as against the present petitioners.

IV. Rule is made absolute in above terms.

V. Criminal Application accordingly disposed of.

(V.K. JADHAV, J.)

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