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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELATE JURISDICTION
CRIMINAL APPLICATION NO.1971 OF 2010

Balasaheb Sahebrao Lavate-Patil ...Applicant
vs.
Pandurang Dhondi Jagta & Anr. ...Respondents

Mr.Kuldeep Patil i/b Mr.Prashant Hagare for the
applicant
Mr.Samarth Moray i/b Mr.Vishwanath Talkute for the
respondent No.1
Mr.K.V.Saste, APP for respondent No.2

CORAM : A.S.OKA, &
 A.A.SAYED, JJ.
DATE : SEPTEMBER 30, 2016

ORAL JUDGMENT : (PER A.S.OKA,J.)

1 Heard the learned counsel for the applicants,
the learned APP for the second respondent and the
learned counsel for the first respondent. in this
application under section 482 of the Code of
Criminal Procedure,1973 (for short CrPC), the prayer
is for quashing the order passed by the learned
Judicial Magistrate First Class on 25th March 2009
under sub-section 3 of section 153 of the CrPC on
the complaint filed by the first respondent. There
is a consequential prayer for quashing the FIR
registered on the basis of the said order.

2 The submission of the learned counsel for the
petitioner is that on plain reading of the complaint
on the basis of which impugned order was passed it
appears that the dispute is purely a civil dispute

which was already sub judice in the form of change reports under the Bombay Public Trusts Act, 1950 (for short 'the said Act'). He submitted that there are no assertions in the complaint as regards compliance under sub-sections 1 and 3 of section 154 of CrPC. The submission of the learned counsel for the first respondent is that the allegations are of commission of an offence under sections 467, 468, 471 and 511 of the Indian Penal Code. He pointed out that the allegation is that accused tried to withdraw amounts from the Bank account of the trust and made an attempt to take over the bank locker of the trust. He, therefore, submitted that the offences alleged were made out and no interference is called for. He submitted that this is a case where investigation is required to be carried out. The learned APP supported the impugned order.

3 We have considered the submissions. We have perused the complaint filed by the second respondent. In the complaint itself it is disclosed that Shreenath Devstan Trust, Medad (for short "the trust") is duly registered as a public trust under the said Act. It is stated that till 3rd December 2008, there was a managing committee of 13 members of the trust. It is contended that the outgoing 13 members convened a meeting on 4th December 2008 to elect a new managing committee and the new managing committee was elected. The allegation is that the applicant who is not even a member of the trust published an advertisement in the newspapers claiming that a new managing committee of the trust

has been formed. In fact, the complaint itself discloses that on the basis of the election of new managing committee as claimed by the present applicant, on 30th January 2005, a change report has been filed by the applicant in the office of the learned Assistant Charity Commissioner, Solapur Region. It is claimed that the resolution of the so called newly elected managing committee was forwarded to Bank of India with a view to withdraw money from the account of the trust and to withdraw the valuables in the Bank locker of the trust.

4 On plain reading of the complaint, it appears that the applicant is claiming that on 4th December 2008 a managing committee of the said trust was elected. The respondent claims that another managing committee was elected on the same date. Admittedly, the two rival change reports in relation to the elections of the managing committee allegedly held on 4th December 2008 are pending. The issue about the legality and validity of the elections of the managing committee is to be decided in the pending change report proceedings. The complaint proceeds on the assumption that the managing committee as claimed by the applicant is not validly elected. Thus, the issue involved in the complaint has predominantly a civil flavour and the issue as to which is the lawfully elected managing committee is to be decided by the learned Assistant Charity Commissioner while deciding the pending change reports. Moreover, we find that there are no

assertions in the complaint that recourse has been taken to sub-sections 1 and 3 of section 154 of the CrPC and notwithstanding the said recourse, FIR was not registered. Hence, the application must succeed.

5 Hence, we pass the following order:

(I) Rule is made absolute in terms of prayer clause (a):

“(a) This Hon'ble Court may pass appropriate order and quash and set aside order dated 25.3.2009 passed by learned Judicial Magistrate, First Class, Malshiras and FIR registered with Malshiras police station on the basis of order dated 25.3.2009 and all further proceedings in Criminal Misc. Application No.574 of 2008 on file of Learned Judicial Magistrate First Class, Malshiras, District Solapur.”

(II) We, however, make it clear that we have made no adjudication on the controversy subject matter of the pending change reports and all contentions of the parties in that behalf are kept open.

(A.A.SAYED,J.)

(A.S.OKA,J.)