

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4043 OF 2014

Evangelical Alliance Ministries Trust
and Others.

..Petitioners.

Versus

State of Maharashtra & Another.

..Respondents.

Mr. Nitin Pradhan i/b Mr. Sandip D. Shinde for the Petitioners.

Mr. R. V. Govilkar for Respondent No. 2.

Mr. J. P. Yagnik, learned APP for the State.

Coram : RANJIT MORE &
S. C. GUPTA, JJ.

Date : **February 3, 2016.**

P. C. :

1. Heard Mr. Pradhan, learned Counsel appearing for the Petitioner, Mr. Govilkar, learned Counsel appearing for the Respondent No.2 and learned APP for the State. The petition is filed seeking to quash the proceedings of a criminal case pending against them on the file of JMFC, Pune, being RCC No.0402317 of 2011.

2. Respondent No.2 filed an application/complaint against the Petitioners, wherein the directions for investigation were given to by learned Magistrate in exercise of powers under

section 156(3) of the Code of Criminal Procedure, 1973. Pursuant to the said directions, an offence bearing MECR 156 of 2011 came to be registered against the Petitioners at Khadak Police Station, Pune for the offence punishable under sections 120B, 403, 405, 406, 408, 409, 465, 467, 468, 471 and 34 of the Indian Penal Code, 1860. After investigation, the police filed charge-sheet before the JMFC, Pune with liberty to carry out further investigation as contemplated under sub-section (8) of section 173 of the Code of Criminal Procedure, 1973.

3. Petitioner No.1 is the trust registered under the provisions of Maharashtra Public Trusts Act. Petitioner Nos.2 and 3 are alleged to have been trustees of the said trust. The allegations against Petitioner Nos.2 and 3 are that they have withdrawn a sum of Rs.32,85,350/- from the bank account of the trust situated at Pune and misappropriated the same.

4. Mr. Pradhan, learned Counsel appearing for the Petitioners submitted that though this amount was withdrawn from the bank, it was expended for the purposes and activities of

the trust only. In our view, whether the Petitioners have misappropriated the said amount or they have accounted it for the trust purposes is a matter of evidence, which would be considered at the trial. Certainly, in such trial the Petitioners would get an opportunity to lead their evidence. The writ Court cannot go into such issues.

5. Mr. Pradhan, learned Counsel appearing for the Petitioners relied upon the provision of section 181 of the Code of Criminal Procedure, 1973 and especially sub-section (4) thereof to contend that Court at Pune has no jurisdiction to try the subject offence against the Petitioners. We are unable to accept the said submission. Petitioner Nos. 2 and 3 are alleged to have withdrawn the said amounts from the bank account of Petitioner No.1 situated at Pune, namely, HDFC Bank, Branch Oswal Bandu Community Building, Shankarshet Road, Opposite Hotel Seven Love, Pune 411042. In that view of the matter, the Courts at Pune have jurisdiction to try the subject offence.

In support of his contention, Mr. Pradhan placed

reliance upon the decision of the Full Bench of this Court in re Jivandas Savachand, dtd 18th July 1930 [The Bombay Law Reporter, Vol. XXXII page 1195]. In that case before the Full Bench, the money was withdrawn and misappropriated at Rangoon, however, offence was registered at Bombay on the basis that money was to be accounted at Bombay. The relevant provisions of section 181(2) as applicable then in the year 1930 were thus :

"The offence of criminal misappropriation or of criminal breach of trust may be enquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed."

. The present section 181(4) reads thus :

*"Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, **or was required to be returned or accounted for**, by the accused person."*

. The words *"or was required to be returned or accounted for"* appearing in sub-section (4) of section 181 were not there in earlier section 181(2) which was under scrutiny

before the Full Bench in aforesaid decision. The Full Bench in the aforesaid case on the basis of the then applicable provisions came to the conclusion that the Court at Bombay where the accused therein were required to give accounts of the partnership business, had no jurisdiction. The facts of the present case are different and all the more the law on the subject has also been further modified and therefore the above decision of the Full Bench is not applicable to the present case. We do not see any reason to entertain this writ petition and exercise our extra-ordinary jurisdiction. Hence, writ petition is dismissed.

[S. C. GUPTE, J.]

[RANJIT MORE, J.]