

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

CRIMINAL WRIT PETITION NO.352 OF 2008

1. Vasant s/o Maroti Pawar,
Age 60 years, Occu. Agri. &
The Secretary of Shanteshwar Shikshan
Samiti, Sastur, Tq. Lohara,
District Osmanabad.
 2. Kallappa s/o Irrappa Mali,
Age 61 years, Occu. Retired,
Head Master, Shanteshwar
Vidhyalaya, Sastur, Tq. Lohara,
District Osmanabad
- ... PETITIONERS
(Original Accused)

VERSUS

1. The State of Maharashtra
through Police Station, Lohara,
Tq. Lohara, Dist. Osmanabad.
 2. Baburao s/o Malikarjun Dalal,
Age 56 years, Occu. Agri.,
R/o Sastur, Tq. Lohara,
District Osmanabad
- ... RESPONDENTS
(Resp. No.2 Orig. Complainant)

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Shri V.D. Gunale, Advocate for petitioners
Shri R.V. Dasalkar, A.P.P. for respondent No.1/ State
Shri V.R. Dhorde, Advocate for respondent No.2

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CORAM: T.V. NALAWADE AND
 SUNIL K. KOTWAL, JJ.

DATE : 3rd August, 2017

JUDGMENT (PER SUNIL K. KOTWAL, J.) :

1. This petition is filed to quash the order passed by Judicial magistrate, First Class, Omerga, under Section 156(3) of the Code of Criminal Procedure in Criminal M.A. No.85/2008 and to quash the F.I.R. registered on the basis of this order. Respondent N.1 is the State of Maharashtra and respondent No.2 is original complainant.

2. Undisputed facts in between the parties are that, Shri Shanteshwar Shikshan Samiti, Sastur, is the registered Trust as well as Society, and the said Trust is having its common rules and regulations. Scheme of the Trust was framed by Assistant Charity Commissioner in the year 2001 for smooth functioning of the Trust. The said Trust runs school namely Shanteshwar Vidhyalaya, Sastur, Taluka Lohara, District Osmanabad, which is recognized school by the Government and receives grant-in-aid from the Government. As per rules and regulations, the managing Committee of the school consists of minimum 7 and maximum 15 trustees. Head Master of the school is ex-officio

trustee of the Trust. The term of the managing Committee is for five years and members of the managing Committee are to be elected in general body meeting. President, Vice President, Secretary and Treasurers are the office bearers of the managing Committee. It is also not disputed that, petitioner No.1 was founder member of the said Trust and President of first Board of Trustees appointed by Assistant Charity Commissioner, Osmanabad. It is not disputed that, petitioner No.2 was Head Master of the school at the relevant time of the occurrence. As per the scheme of the Trust, the Bank Account of the Trust can be operated by the signature of any two persons out of Chairman, Secretary or Treasurer of the Trust.

3. The complainant filed Criminal complaint against the petitioners on the ground that in the year 2004 to 2005, the Education Society/ Trust received Rs.1,72,500/- towards non-salary grants under three different cheques dated 18/10/2005. Though petitioner No.1 was ordinary member of the Trust, he signed the cheques along with petitioner No.2 to deposit the above said non-salary grants in the account of Education Society maintained at Osmanabad District the Central Co-operative Bank Ltd., Branch Sastur and unauthorisedly spent that amount though there was no such direction of the Trust.

4. After filing of the complaint, instead of taking cognizance of the offence, the learned Judicial Magistrate, First Class, Omerga passed following order :

“Read complaint. Heard Advocate for complainant. However as offence punishable u/s 420, 468 r/w 34 of I.P.C. are cognizable, therefore detail investigation is necessary. Hence Police Inspector of P.S. Lohara is directed to submit report u/s 156(3) of Cr.P.C. after investigation by registering the offence.”

5. on the basis of this order, above said crime was registered against the petitioners and, therefore, this petition arises.

6. Heard learned advocate for the petitioners and learned advocate for respondents. Learned advocate for the petitioners has drawn our attention towards various resolutions passed by the managing Committee of the Trust permitting to spend the non-salary grants towards repair works and other miscellaneous work. He has also drawn our attention towards resolution of the Trust regarding acceptance of the resignation of the then Secretary as well as subsequent appointment of petitioner No.1 as Secretary of the Trust at the relevant time of

the occurrence. According to learned Advocate for the petitioners, no wrong has been committed by the petitioners while signing the disputed cheques or while making expenditure of non-salary grants amount for the purpose of the school run by the Trust.

7. Learned Advocates for the respondents supported the order passed by the Judicial Magistrate, First Class, Omerga.

8. After going through the impugned order passed by the Judicial Magistrate, First Class, Omerga, we are fully satisfied that the said order was passed without considering the facts of the case and without satisfaction of the Court that cognizable offence is made out against the petitioners. The impugned order does not reflect such application of mind by the trial Court. The impugned order is absolutely non speaking and mechanical order, passed without application of mind. Apex Court had occasion to consider the validity of such type of order in the case of **Maksud Saiyed Vs. State of Gujarat & ors.** reported in **(2008) 5 SCC 668**, wherein Apex Court examined the requirement of the application of mind by Magistrate before exercising jurisdiction under Section 156(3) and held that, where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply

his mind in such a case. The application of mind by Magistrate should be reflected in order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) of the Code of Criminal Procedure should be reflected in the order, though a detailed expression of his views is neither required nor warranted. This law is also followed by Apex Court in **Anil Kumar & ors. Vs. M.K. Aiyappa & anr.** reported in **AIR 2014 SC (Supp) 1801.**

9. In view of law settled by Apex Court, the impugned order passed by Judicial magistrate, First Class, Omerga in Criminal M.A. No.85/2008 is bad in law and deserves to be quashed and set aside on this count.

10. Otherwise also, after going through the copies of resolutions passed in the meeting of managing Committee dated 30/7/2005, it emerges that the resignation of the then Secretary of the Education Society Shri Dinkar Vyankatrao Suryawanshi was accepted and in his place, the petitioner No.1 was elected as Secretary of the Society. The resolutions passed in the meeting of the managing Committee of the Trust, dated 16/8/2005,

6/10/2005, 23/11/2005, 20/12/2005, 15/1/2006 and 22/3/2006, show that, the then managing Committee had given approval for expenditure towards minor repairs of the school and other miscellaneous expenditure. These all resolutions are signed by the respondent No.2, who was the then Member of the managing Committee of the Trust. Therefore, the respondent No.2, who is the original complainant, was well aware that, at the relevant time of the occurrence, the petitioner No.1 was the elected Secretary of the Trust, and with the approval of managing Committee of the Trust, all the expenditure towards repairs of the school and for other miscellaneous work were incurred by the petitioner as well as the then Head Master, who is petitioner No.2. Therefore, for operating the Bank Account of the Trust, petitioners cannot be blamed by the complainant (respondent No.2).

11. In the result, otherwise also, no case is made out against both the petitioners to proceed against them for the offences punishable under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code. In the circumstances, we hold that the impugned order passed by the Judicial Magistrate, First Class, Omerga in Criminal M.A. No.85/2008 and the consequential F.I.R. as well as registration of the Crime No.6/2008 at Police Station, Lohara deserves to be set aside and

this petition deserves to be allowed as follows :

12. Hence the following order :

ORDER

- (i) Criminal Writ Petition No.352/2008 is allowed.
- (ii) The order passed by Judicial Magistrate, First Class, Omerga in Criminal M.A. No.85/2008, dated 1/4/2008 and the F.I.R. registered in Police Station, Lohara bearing Crime No.6/2008 for the offence punishable under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code is quashed and set aside. Criminal M.A. No.85/2008 pending before Judicial Magistrate, First Class, Omerga is dismissed.
- (iii) Rule made absolute in above terms.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/