

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

**CRIMINAL APPLICATION NO. 3944 OF 2016**

1. Pandharinath S/o Kishan Nikalje,  
Age : 67 years, Occu. Nil.
2. Sanjay S/o Pandharinath Nikalje,  
Age : 35 years, Occu. Private Service,
3. Rajesh S/o Pandharinath Nikalje,  
Age : 32 years, Occu. Private Service,
4. Kiran S/o Pandharinath Nikalje,  
Age : 40 years, Occu. Private Service,
5. Vishwanath S/o Kishan Nikalje,  
Age : 60 years, Occu. Business,
6. Mahaveer S/o Namdev Gambhire,  
Age : 75 years, Occu. Nil

All R/o. Maljipura, Shaktinagar,  
Tq. & Dist. Aurangabad.

**Applicants  
(All are accused)**

**Versus**

1. State of Maharashtra,  
Through Police Station, Kranti Chowk,  
Tq. & Dist. Aurangabad.
2. Jagdishgiri S/o Kanchangiri Mehta,  
Age : 49 years, Occu. Pujari,  
For and as President of  
Tukangiri Math, Maljipura, Shaktinagar,  
Central Bus Stand, Tq. & Dist. Aurangabad.

**Orig. Complainant.  
Respondents**

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Mr J. V. Deshpande, Advocate for the petitioners  
Mr D. R. Adhav, Advocate for respondent No. 2  
Mrs P. V. Diggikar, APP for respondent/State  
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CORAM : **S. S. SHINDE &  
A. M. DHAVALA, JJ.**

RESERVED ON : 19.09.2017.  
PRONOUNCED ON : \_\_.10.2017.

**JUDGMENT (PER A. M. DHAVALA, J.) :**

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. This is an application under Section 482 of the Cr.P.C. for quashing of FIR at C.R. No. 404/2016 registered against the applicants at Kranti Chowk Police Station for the offences punishable u/s 406,420, 467,468, 471 r/w 34 of IPC on 19.04.2016.

3. The FIR lodged by respondent No.2 discloses that, Jagdishgiri Kanchangiri Mehta is trustee of Tukangiri Kailasgiri Math situated at Maljipura, Shaktinagar, Aurangabad. The trust is registered with the office of Charity Commissioner, Aurangabad on 03.08.1972 and holds two acres 10 gunthas land at old survey no.2/56, new survey no. 9 and CTS No. 20722. It was gifted by

Salarjang for maintenance of Hanuman temple. On 08.01.1962, Kishan Nikalje was appointed as a Choukidar for maintenance of the temple. Applicant No.1- Pandharinath is his son and accused Nos. 2 to 4 are sons of applicant No. 1. Accused No. 5 is brother of applicant No. 1. The then trustee Kanchangiri had executed a Power of Attorney to Kishan Nikalje. Kishan misused it and in order to grab the land of public trust, he in collusion with one Narayangiri fought RCS No. 231/1981 between themselves. Thereafter First Appeal No. 12/1983 and thereafter Second Appeal No. 101/1985 were filed. The claim of Kishan for ownership was not proved. On 11.10.1997, applicant No. 1 prepared a false and bogus affidavit showing that respondent No. 2 has granted permission to him to construct 2 rooms of the size of 16 x 25 ft. The said affidavit was attested by applicant no. 6. On 19.09.2005, applicant No. 5 - Vishwanath, brother of applicant No. 1, executed registered sale deed to sell two rooms from the trust property to Jabbar Ali and received consideration of Rs.1,25,000/- from him. Thereafter, applicants No. 1 to 4, on 30.12.2013, executed an agreement to sale of land of 2 acres 01 gunthas in favour of Riyaaz Ahmed and Laxman Baliram Dilliwale for Rs. 25.00 lakhs. The accused had not obtained any consent of respondent No. 2 and of Assistant Charity Commissioner, Aurangabad before entering into such dealings. When respondent No.

2 accosted them in October 2015, he was threatened that if he would make complaint with police, his legs and hands would be cut and he would be killed.

4. Mr J. V. Deshpande, learned counsel for the applicants sought quashing of the FIR on the following grounds :

- (i) The suit property is not the property of public trust. It is not entered in the schedule.
- (ii) There was previous litigations which shows that the applicants had a right in respect of the suit property. It is essentially a civil dispute.
- (iii) There is huge delay in lodging the FIR. The FIR is false and bogus. The documents relate to land CTS No. 20722. The said land is not belonging to the public trust.

5. Mrs P. V. Diggikar, learned APP for the State/respondent No. 1 and Shri. D. R. Adhav, learned counsel for respondent No. 2 strongly opposed the application. They have contended that, the suit property belongs to the public trust. There is documentary evidence to that effect. The applicants have no concern with the suit property. Deceased Kishan was mere a licensee. Narayangiri and the applicants

in collusion with each other obtained a compromise decree and on the basis of the same some mutations were obtained. The applicants have not produced the forged affidavit dt. 11.10.1997. The powers u/s 482 of Cr.P.C. cannot be exercised when there are disputed questions of facts.

6. Perused the record and considered the arguments advanced.

7. We find that, it is not a mere civil dispute. The schedule produced by respondent No. 2 shows that Math property as described at page 50 is recorded in the name of trust. Deceased Kishan is common ancestor of applicants No. 1 to 5. He was appointed as Watchman and a document to that effect dt. 16.01.1966 has been produced. A copy of Power of Attorney dt. 02.10.1972 in his name is also produced. There is decision of Asst. Charity Commissioner holding that the property belongs to the Math and respondent No. 2 is held to be the trustee. Whether the properties sold by applicants No. 1 to 6 are from the property of trust or from some other property and whether the affidavit is forged, bogus or genuine one is a matter to be decided after investigation and trial. This Court in exercise of powers u/s 482 of Cr.P.C. cannot go into the minute points on

disputed facts.

8. Suffice it to say that, *prima facie* the applicants have no right in respect of the property belonging to the trust and still they have sold some properties which appear to be of the trust. We find that the investigation in the matter is essential to find out the truth. We hold that, in the light of the settled case law in respect of exercise of powers u/s 482 of Cr.P.C., this is not a fit case for invoking the powers.

9. Hence, the application deserves to be rejected and same is accordingly rejected. No order as to costs. Rule is discharged.

**[ A. M. DHAVALE ]**  
**JUDGE**

**[ S. S. SHINDE ]**  
**JUDGE**

sgp