

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

CRIMINAL WRIT PETITION NO.1085 OF 2016

Suresh Manoharlal Dhariwal,
Age : 55 years, Occu : Business,
R/o : Jalgaon Road, Jamner,
Tq. Jamner, Dist. Jalgaon.

PETITIONER

VERSUS

1. The State of Maharashtra
Through Jamner Police Station,
Dist. Jalgaon.
2. Krushna Dyandev Bankar
Age : 54 years, Occu : Profession
R/o : Dhanpushpa Colony,
Waki Road, Jamner, Tq. Jamner,
Dist. Jalgaon.

RESPONDENTS

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Ms. Surekha P. Mahajan, Advocate for the Petitioner
Mrs. Dipali S. Jape, APP for Respondent No.1- State.
Mr. Girish V. Wani, Adv. for Respondent No.2.

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**CORAM: S.S.SHINDE &
MANGESH S. PATIL, JJ.**

Reserved on : 20.11.2017
Pronounced on : 21.12.2017

JUDGMENT: (Per S.S.Shinde, J.):

Rule. Rule made returnable forthwith
and heard finally with the consent of learned
counsel appearing for the parties.

2. This Petition is filed praying therein, to quash and set aside the FIR No. 92/2016 registered with Jamner Police Station, Dist. Jalgaon under sections 420, 403, 406 dated 30.6.2016.

3. Learned counsel appearing for the petitioner submits that, the petitioner is the trustee of the trust viz:-Jamner Taluka Education Society, Jamner, Dist. Jalgaon (Hereinafter referred to as "the said trust"). The said trust passed Resolution No.5 on 22nd July, 2005, unanimously for purchasing the land for extension of the college building for running D.Ed., B.Ed. and B.Pharmacy courses. In view of the said Resolution No.5, the sale deeds in respect of land Gut Nos.20/1A and 20/1B from Mouje Takli (B), Tq. Jamner, for consideration of Rs.7,12,500/- each, came to be executed

firstly between the President of the said trust and Shri Padmakar Daulat Sonar and secondly between the President and Smt.Pramilabai Sudhakar Saraf on 14th September, 2005. The consideration amount of the said transaction has been paid through account payee cheques of the said trust from time to time and the transaction was completed on 15th September, 2005. So also, there is audit conducted of the said trust for the year 2005-2006 and in the audit report, the entry of the said transaction is appearing.

4. Learned counsel submits that, the offences alleged against the petitioner in the first information report are false and politically motivated. The complainant is neither the member nor trustee of the said trust and therefore, he has no locus to file the first information report, and it is the

Charity Commissioner, who is competent under the Maharashtra Public Trusts Act, 1950 to file the criminal complaint against the trustees of the trust, if it is found that the trustees are not taking proper care of the trust, and if there is any misappropriation etc. It is submitted that, there is delay in lodging the first information report, as the transaction took place in the year 2005 and the first information report is lodged in the year 2016. Apart from above, the petitioner has co-operated with the investigating machinery and has submitted all the relevant documents to the authority.

5. Learned counsel appearing for the petitioner further submits that, if the allegations in the first information report are taken at their face value and read in its entirety, the alleged offences are not

disclosed against the petitioner. It is submitted that, there is no inducement by the petitioner so as to attract the ingredients of Section 420 of the Indian Penal Code. So also neither there is any criminal breach of the trust nor any dishonest misappropriation of the property, and the entire transaction is between the trust and the land owners. Therefore, learned counsel submitted that, none of the sections mentioned in the first information report are attracted qua the petitioner.

6. Learned counsel appearing for the petitioner submits that the ingredients of Sections 420, 406 and 403 of the Indian Penal Code are not attracted, and therefore, the first information report deserves to be quashed. Learned counsel appearing for the petitioner in support of her contention that, the dispute is of civil nature, and

therefore, the criminal complaint is not tenable and also the third party cannot file the complaint in sale transaction, has placed reliance on the judgment in the case of **Mohammed Ibrahim and others V/s State of Bihar and another¹**. In support of the contention that, at the time of quashing the first information report, the Court has only to look at uncontroverted allegations in the complaint, learned counsel has placed reliance on the exposition of law by the Supreme Court in the case of **Rishipal Singh V/s State of U.P. and another²**. It is further submitted that, if the allegations in the first information report do not disclose the alleged offences, in that case, the first information report deserves to be quashed. In support of this contention, learned counsel appearing for the petitioner has placed reliance on the judgment in the case of

1 (2009) 8 SCC 751

2 2014 AIR SCW 3810

Mr.Jitendra Nathmal Joshi @ Sharma V/s The State of Maharashtra and another³. In support of the contention that the Charity Commissioner is empowered under Sections 41-D and 41-E of the Maharashtra Public Trusts Act to deal with the allegations of misappropriation, and therefore, the first information report is not maintainable, learned counsel has placed reliance in the case of **Upnagar Shikshan Mandal and others V/s State of Maharashtra and others⁴** Therefore, relying upon the averments in the application, annexures thereto and the grounds taken therein, learned counsel appearing for the petitioner submits that, the Petition may be allowed.

7. On the other hand, learned A.P.P. appearing for the respondent-State, relying upon the contents of the first information

3 2011 All MR (Cri) 2597

4 2012(1) Mh.L.J. 824

report and the investigation papers, submits that, there are specific allegations against the petitioner in the first information report. Therefore, he submits that the further investigation is necessary, since alleged offences have been disclosed.

8. Learned counsel appearing for Respondent No.2 submits that, resolution No.5 which has been passed by the trust speaks about purchase of land for the purposes of extension of building for opening B.Ed. and D.Ed. college, but inspite of purchasing the said land in the year 2005, till today the said land has not been put to use for which it has been purchased. It is submitted that, B.Ed. course and all other courses have already been started by the said trust long back, but the said land which has been purchased for B.Ed. course is not at all put to use till today. It is submitted that, the

land is under cultivation and crops are taken in the said land, however, according to him, there is no account kept showing the yield, which has been received from the said land. He further submits that, the property which was purchased by Pramila Saraf and Padmakar Sonar from Kashiram Gadhe in the year 2002 for an amount of Rs.1,40,000/- and the same property has been purchased by the said trust on 14th September, 2005 for consideration of amount of Rs.14,25,000/-. So also, the adjoining land i.e. land Gut No.20/2 admeasuring 1 Hectore 66 Are has been purchased by the petitioner and his brother Ishwarlal Manoharlal Dhariwal from Ramdas Gadhe on 30th January, 2006 for an amount of Rs.3,00,000/-, and the adjoining land i.e. land gut No.20/1 admeasuring 1 Hectore 65 Are has been purchased for the trust by the petitioner for an amount of Rs.14,25,000/- Therefore, the learned counsel submits that,

the entire chain of events demonstrates a clear case of fraud played on the trust and also how the trust has been cheated by the present petitioner while working as a Secretary of the Trust. In support of the contention that, it is well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary, learned counsel has placed reliance on the exposition of law by the Supreme Court in the case of **A.R. Antulay V/s Ramdas Shrinivas Nayak**⁵. Therefore, learned counsel appearing for the petitioner submits that, the application may be rejected.

9. We have given careful consideration to the submissions advanced by learned counsel appearing for the petitioner,

5 1984 AIR (SC) 718

learned A.P.P. appearing for Respondent-State and learned counsel appearing for Respondent No.2. With their able assistance, we have perused the contents of the first information report, the averments in the application, annexures thereto and the reply filed by Respondent No.2. We have also perused the investigation papers which are made available for perusal by learned A.P.P.

10. The gist of allegations in the first information report is that though the land is purchased for the purposes of extension of building for opening D.Ed. and B.Ed. courses in the year 2005, till date the said land has not been put to use for which it has been purchased. Even the N.A. permission of the said land has not been sought till today. B.Ed. course and all other courses have already been started by the trust long back and the land which was purchased in the year

2005 is not at all put to use till date. The land is under cultivation and crops are taken, however, to the knowledge of the informant no account is maintained about the yield received from the land. The land which has been purchased i.e. gut no.20/1/A was owned by Padmakar Daulat Sonar, who had purchased the said land in the year 2002 from Kashiram Ramchandra Gadhe for an amount of Rs.70,000/-. So also land gut no.20/1/B, which has been purchased by the Trust of which the present petitioner was the Secretary from Pramila Bai Sudhakar Saraf, who had purchased the said land from Kashiram Ramchandra Gadhe for Rs.70,000/- in the year 2002. In this way, the property which was purchased by Pramila Saraf and Padmakar Sonar from Kashiram Gadhe for an amount of Rs.1,40,000/- in the year 2002 has been sold to the trust on 14th September, 2005 for an amount of Rs.14,25,000/-. Adjoining land i.e.

gut no.20/2 admeasuring 1 H 66 Are has been purchased by the present petitioner and his brother Ishwarlal Manoharlal Dhariwal from Shri Ramdas Gadhe on 30th January, 2006 for an amount of Rs.3,00,000/-.

11. It clearly appears from the perusal of the statements of the land owners that, the petitioner issued the cheques of different amounts in their favour and asked them to deposit the said cheques in their bank accounts, thereafter withdrew the said cheque amounts from the bank and returned the same to the petitioner. Accordingly, the land owners deposited the said cheques issued in their favour in their respective bank accounts and after withdrawal of the said amount, the same was given back to the petitioner. As stated by the land owners, out of the said amount/cash, the petitioner retained the substantial amount with him and

returned remaining amount/cash to the land owners towards the consideration of purchase of land for the trust. Therefore, the statements of the land owners prima facie shows that, the petitioner herein is beneficiary of substantial amount in the transactions entered between the land owners on one hand and petitioner on behalf of trust on the other hand. There is no denial to the fact that, pursuant to the resolution passed by the trust in the year 2005, the said trust has purchased the land from gut no.20/1 admeasuring 1 H 65 Are and within three months in the year 2006, the same area of adjoining land from gut no.20/2 admeasuring 1 H 66 Are has been purchased by the petitioner and his brother for an amount of Rs.3,00,000/-.

12. The prayer for quashing the first information report will have to be considered

keeping in view the exposition of law by the Supreme Court in the case of **State of Haryana V/s Bhajan Lal**⁶. The Supreme Court in the said case in para 108 held as under :-

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be

6 AIR 1992 SC 604

exercised.

1. *Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
2. *Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
4. *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
5. *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding*

against the accused.

6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

13. If the allegations in the first information report are carefully perused, it is not the case that the alleged offences are not disclosed, or the allegations are inherently improbable. The Investigating Officer has collected the copies of the sale deeds and also recorded the statements of the land owners and witnesses and also collected other incriminating material during the course of investigation.

14. The contention of the learned counsel appearing for the petitioner that the first information report is outcome of political motivation is not specifically averred, and to that effect no material particulars are placed on record so as to consider the prayer to quash the first information report on the said ground. Another contention of the learned counsel appearing for the petitioner that, Respondent No.2 has no locus to file such first information report; the Supreme Court in the case of **A.R. Antulay (supra)**, has specifically held that, it is well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary.

15. The contention of learned counsel

appearing for the petitioner that, there is more than 10 years delay in lodging the first information report, and already Assistant Charity Commissioner has conducted the audit for the relevant year i.e. 2005-2006, and therefore, the first information report may be quashed, deserves no consideration. Respondent No.2 has stated that, he came to know about the alleged transaction recently before filing the first information report.

16. Another contention of learned counsel appearing for the petitioner that under Sections 41-D and 41-E of the Maharashtra Public Trusts Act, the Assistant Charity Commissioner can look into the affairs of the trust, and if there is misappropriation, can take appropriate action, and therefore, the first information report is not maintainable, deserves to be rejected. The scope of enquiry by the

Assistant Charity Commissioner under the said provisions cannot take the care of the entire allegations in the first information report. The contention that the civil remedy is available, and therefore, the criminal law cannot be set in motion is also not the correct position in law. So far as the locus of Respondent No.2 is concerned, he has stated in the first information report itself that, his son is studying in New English School, Jamner, which is established and run by the Jamner Taluka Education Society, Jamner, of which petitioner is trustee. It appears that, the bail has already been granted to the petitioner, and therefore, mere further investigation will not cause any prejudice to the petitioner. The Supreme Court in the case of **HDFC Securities Limited and others V/s State of Maharashtra and another**⁷ and another held thus :-

⁷ (2017) 1 SCC 640

"27. It appears to us that the appellants approached the High Court even before the stage of issuance of process. In particular, the appellants challenged the order dated 4-1-2011 passed by the learned Magistrate under Section 156(3) CrPC. The learned counsel appearing on behalf of the appellants after summarising their arguments in the matter have emphasised also in the context of the fundamental rights of the appellants under the Constitution, that the order impugned has caused grave inequities to the appellants. In the circumstances, it was submitted that the order is illegal and is an abuse of the process of law. However, it appears to us that this order under Section 156(3) CrPC requiring investigation by the police, cannot be said to have caused an injury of irreparable nature which, at this stage, requires quashing of the investigation. We must keep in our mind that the stage of cognizance would arise only after the investigation report is filed before

the Magistrate. Therefore, in our opinion, at this stage the High Court has correctly assessed the facts and the law in this situation and held that filing of the petitions under Article 227 of the Constitution of India or under Section 482 CrPC, at this stage are nothing but premature. Further, in our opinion, the High Court correctly came to the conclusion that the inherent powers of the Court under Section 482 CrPC should be sparingly used." (Underlines added)

17. In that view of the matter, we are unable to persuade ourselves to grant any relief in favour of the petitioner. Hence the Petition stands rejected. Rule stands discharged accordingly.

The observations made hereinabove are prima facie in nature and confined to the adjudication of the present Writ Petition.

[MANGESH S. PATIL]
JUDGE

[S.S.SHINDE]
JUDGE