

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6014 OF 2016

1. Suryakant S/o Damodhar Landge,
Age : 35 years, Occu - Agril. & Service,
2. Damodhar S/o Haribhau Landge,
Age : 65 years, Occu - Agril.,
3. Bhaskar S/o Vishwanath Thombre,
Age : 55 years, Occu - Agril.,
4. Narayan S/o Laxman Garde,
Age : 55 years, Occu - Agril.,
5. Ratan S/o Bhanudas Thombre,
Age : 57 years, Occu - Agril.,
6. Bhagwat S/o Kundlik Thombre,
Age : 55 years, Occu - Agril.,
7. Babasaheb S/o Ramrao Thombre,
Age : 55 years, Occu - Agril.,
All R/o : Undri, Tq. Kaij,
District : Beed.

...APPLICANTS

Versus

1. The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Police Inspector,
Police Station Yusuf Wadgaon,
Tq. Kaij, Dist. Beed.
3. Trimbak S/o Pandharinath Thombre,
Age : 65 years, Occ : Agri.
R/o - Undri, Tq. Kaij,
District. Beed.

...RESPONDENTS

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Advocate for applicants: Mr.B.A. Dhengle
APP for Respondent/State : Mr. S.B. Yawalkar
Advocate for respondent no.3 : Mr. S.G. Kawade holding
for Mr. R.T. Deshmukh

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**CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.**

**RESERVED ON : 24th February, 2017
PRONOUNCED ON : 6th March, 2017**

JUDGMENT : (PER S.S. SHINDE, J)

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

2. The brief facts as disclosed in the application, are as under:-

(a) The trust namely Shiv Chhatrapati Sarwjanik Wachanalay at Village Undari, Tq. Kaij, Dist. Beed (Hereinafter referred to as "the said Trust") came to be registered bearing registration No. F-707/Beed on 29th August, 1985 under the provisions of Bombay Public Trust Act, 1950 (Hereinafter referred to as "the B.P.T. Act"), and also under the Societies Registration Act, 1960. Respondent No.3 was the President, applicant No.2

was the Secretary and applicant no.3 to 7 were the office bearers/members of executive committee of the said trust since the date of its registration up to the year 2007. That, applicant No.1 was appointed as a Librarian of Granthalay by the existing body at the relevant time by following the due procedure of law and by passing resolution dated 4th April, 2001. There was no election conducted of the said trust till the year 2007 and the earlier body was looking after the day today affairs of the said trust.

(b) Respondent No.3 was the President of the said trust, however, he was not interested to conduct the elections and also he was never acting for the benefit of trust, on the contrary he was trying to create obstacles in the smooth functioning of the said trust. As there was no election conducted since beginning, though the bylaws of the said trust provides 3 years period for holding the elections of the executive committee, therefore, applicants No. 2 to 7 and others have conducted the election of the above

trust and Change Report No. 813 of 2007 was submitted for its approval before the Assistant Charity Commissioner, Beed. As the name of respondent No.3 has been removed from the Executive Committee of the Trust, as per the newly election held in the year 2007 and when Change Report No.813 of 2007 is submitted for its approval to the Assistant Charity Commissioner, Beed, later on respondent No.3 illegally submitted the another Change Report No.1073 of 2007 showing the alleged election of the Executive Committee conducted by his group, and both the Change Reports are pending for its approval before the Assistant Charity Commissioner, Beed.

(c) Respondent No.3 without there being any cause has filed application under section 41-E of the B.P.T. Act before Joint Charity Commissioner, Latur seeking injunction against the present applicants raising false allegations against the applicants regarding misappropriation and mis-utilization of the trust fund. The said application came to be rejected by the Joint

Charity Commissioner, Latur by its order dated 21st December, 2012 holding that, there is no material filed on record by respondent No.3 to prove the said allegations. On the contrary the present applicants have placed on record the certified copies of audit report at Exh. 26 upto the year 2010 and also copy of Exh.27 showing details of funds received and the expenditure made by them. The applicant/respondent No.3 herein failed to prove the case for granting injunction by exercising powers under section 41-E of B.P.T. Act. The said order has not been cancelled or set aside by any superior court so far.

(d) Respondent No.3/complainant again made some complainant to the Assistant Director of Library Region, Aurangabad and pursuant to that, the enquiry was conducted by the District Granthalay Officer, Beed. The allegation raised by the complainant/respondent No.3 regarding the resolution dated 4th April, 2001 passed by the Executive Committee of the Trust thereby appointing applicant No.1 as a Liberian is/was illegal and

further applicant No.1 was taking education at Beed at Sawarkar College and thereafter, Vasant College at Kaij respectively, at the relevant time, and therefore, his appointment was bogus etc was turned down and rejected by the order dated 2nd December, 2015.

(e) All the efforts made by the complainant i.e. respondent No.3 by filing false complainants before the Joint Charity Commissioner and the Assistant Director of Librarian for causing harassment to the present applicants are failed, therefore, again he filed the false Criminal Private complainant on 30th August, 2016 under sections 406, 408 & 468 of IPC before the Judicial Magistrate, First Class, Kaij alleging the same allegations which were raised before the Joint Charity Commissioner, Latur by filing application under section 41-E of B.P.T. Act. It has been falsely stated that, the appointment of applicant No.1 is made illegally by applicant No. 2 to 7 in collusion by passing false resolution dated 4th April, 2001. It has been further alleged that, the

applicant No.1 was taking the education at the relevant time at Beed and Kaij and attending the College during the period from 2001 to 2004. It has been further alleged that, applicant Nos.1 to 7 in collusion with each other withdrawn the amount of Rs. 72,000/- during the said period by preparing false records. The Judicial Magistrate, First Class, Kaij passed the order on 29th September, 2016 thereby directing investigation under Section 156(3) of IPC to the Police Station Yusuf Wadgaon.

(f) Pursuant to the order passed by the Judicial Magistrate, First Class, Kaij, the concerned police of respondent No.2 straightway registered the First Information Report bearing crime No.156 of 2016 as against the applicants under Sections 406, 408 and 468 of IPC, without making enquiry in the matter. The concerned police have not made any investigation as provided under Section 157 of the Criminal Procedure Code. The concerned police have just reproduced the contents of the private complainant filed by the complainant before the Judicial Magistrate, First Class, Kaij

as it is and have falsely registered the above referred crime. The registration of FIR against the applicants on the basis of false allegations which relates back to 15 years back and similar allegations were raised before the Joint Charity Commissioner, Latur and also before Assistant Director Library Region Aurangabad and the same were rejected. The act of concerned police thereby registering the crime against the applicants is abuse and misuse of process of law and powers and same resulted into miscarriage of justice and harassment of applicants unnecessarily. Therefore, the applicants have filed the present Criminal Application for quashing the F.I.R.

3. The learned counsel appearing for the applicants submits that, earlier the complaint was filed making same allegations like in the present First Information Report, however, the said complaint came to be rejected. It is submitted that, the informant has no locus to lodge the first information report. The allegations in the first information report are relate back to the period

from the year 2001 to 2006. The first information report is belatedly lodged on 4th April, 2016. There is no reason stated in the first information report or there is no plausible explanation offered on record for inordinate delay in lodging the first information report. Therefore, relying upon the averments in the application and the annexures thereto, the learned counsel appearing for the applicants submits that, the first information report deserves to be quashed.

4. The learned A.P.P. appearing for the respondent/State, relying upon the investigation papers, submits that, as a matter of fact, upon perusal of the record maintained by the institution, it is abundantly clear that, on 3rd June, 2001 applicant no.1 herein sought permission from the institution to attend the classes in the evening and perform job of Librarian during the day time. He used to render the services in the Library about four to four and half hours and in the evening he used to attend the classes in the college. Some and substance of the investigation is

that, applicant no.1 did work in the Library for four to four and half hours on working days and day on which Library was closed, he used to attend the college for whole day. There was no overlapping in respect of time of duties in the Library and attending the classes in the college.

5. The learned counsel appearing for respondent no.3 has placed reliance upon the reply filed by respondent no.3 and submits that, as a matter of fact, applicant no.1 did not attend the duty and he was taking education from the academic year 2001-2002 to 2003-2004 as a regular student and even then in collusion with applicant nos. 2 to 7 without calling meeting prepared forged resolution resolving that, applicant no.1 was appointed as new Librarian, though he was not qualified as a Librarian and was taking education during the relevant period. He withdrew Rs.72,000/- towards salary from 2001 to 2004. According to the learned counsel appearing for respondent no.3 time of college was overlapping with the timing of library. The said Library was at village Undri and

applicant no.1 was taking education at Beed, which is 75 Kms. away from the village Undri.

6. Upon careful perusal of the documents placed on record, it appears that, respondent no.3 did file the complaints before the Joint Charity Commissioner and Assistant Director of Librarian against the applicants and those proceedings were entertained by the said authority in Inquiry No.12 of 2010 under Section 41-A of the B.P.T. Act. It also appears that, there is some dispute about which group should manage the affairs of the trust and respondent no.3 sought injunction against the trustees restraining them from selling the books of the trust and also utilising the trust funds granted by the Director Granthalaya, Aurangabad. Therefore, the position emerges on record is that, there is dispute in the trust and as a result, respondent no.3 did file the Complaint bearing R.C.C. No.290 of 2016 and in the said complaint, the direction is given to register the first information report against the applicants. As already observed, the allegations relates back to

the period from 2001 to 2004. There are also allegations of conspiracy *inter-se* between the applicants. There is mechanism provided under the Bombay Public Trust Act and also there are other forums and hence the criminal complaint, *prima facie*, appears to be outcome of revelry between two groups of the said trust and applicant no.1 is implicated in the said controversy though the allegations against him relates back to the year 2001 to 2004.

7. Upon careful perusal of the allegations in the first information report, it appears that, the entire allegations relates back to the period from 2001 to 2004, however, the complaint is filed in the year 2016. There is no explanation offered by the complainant for filing such complaint belatedly after 12 years. Upon careful perusal of the reasons assigned in the order passed by the Judicial Magistrate, First Class, Kaij while issuing direction to the Police Station Yusufwadgaon under section 156(3) of Code of Criminal Procedure for investigation, there are no reasons assigned except

the alleged offences are cognizable and considering the nature of allegations, the investigation at the hands of Police is necessary. In view of the exposition of law by the Supreme Court in the case of **Maksud Saiyed Vs. State of Gujrat**¹ and also the Division Bench of the Bombay High Court bench at Nagpur in the case of **State of Maharashtra V/s Shashikant Eknath Shinde**², it is incumbent upon the Magistrate to at last record the brief reasons while issuing directions under section 156(3) of the Code of Criminal Procedure for investigation by the Police Station. In the facts of the present case when the complaint was filed after 12 years, the learned Magistrate ought to have been more careful while entertaining the said complaint, and if wanted to issue directions to the Police Station to cause investigation, the reasons ought to have been assigned for ordering such investigation.

8. The Supreme Court in the case of **State of Haryana V/s Bhajan Lal**³ held that, in following

1 2008(5) S.C.C. 668

2 2013(4) Bom.C.R. (Cri.) 801

3 AIR 1992 SC 604

categories the Court would be able to quash the F.I.R.

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 extra-ordinary 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 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.*

9. Keeping in view the investigation done by the concerned Police Station and also filing of belated complaint by the complainant i.e. respondent no.3, which appears to be outcome of vengeance by the opposite group of the trustees, who were managing the affairs of the trust at the relevant time of filing the complaint, in our considered opinion, the case in hand is covered in category no.7 of the aforesaid categories.

10. In the light of discussion in foregoing paragraphs, the application succeeds. The Criminal Application is allowed in terms of prayer clause 'B' and the same stands disposed of. Rule made absolute accordingly.

However, we make it clear that the observations made hereinbefore are confined to the adjudication of the present application and no party would be entitled to derive benefit out of the present proceedings in any other proceedings pending or decided or will be instituted in future

about the affairs of Shiv Chhatrapati Sarwjanik Wachanalay at village Undari, Tq. Kaij, Dist. Beed. We also make it clear that, the observations made hereinabove will have no bearing on the pending proceedings, if any, either before the Charity Commissioner/Assistant Charity Commissioner/ Joint Charity Commissioner or before any other Civil Court as the case may be.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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