

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1538 OF 2002

Imtiyaz Ismail Baig & Anr.

... **Applicants**

V/s.

Mominpada Masjid Yakub Baig Trust & Ors.

... **Respondents**

Mr.Mobin Solkar i/b H.A. Solkar for the Applicant.

Ms. Priyanka Thakur for Respondent No.1.

Mr. A.S. Pandire for Respondent No.2 and 4.

Mr. Rajan Salvi, APP for the Respondent No.5 State.

CORAM : A.S.GADKARI, J.

DATE : 15th NOVEMBER, 2017

P.C.:

. By the present application under Section 482 of Cr.PC., the Applicants have prayed that the Order of issuance of process dated 19.05.2000 passed in RC No. 147 of 2000 and RC No. 147 of 2000 pending on the file of Judicial Magistrate First Class, Panvel be quashed.

2 Heard the learned Counsel for the Applicants, the learned Counsel for Respondent No.1, learned Counsel for Respondent Nos. 2 and 4 and the learned APP for State. Perused the record annexed to the application.

3 The record indicates that the Applicants, Respondent No.1 Mr. Alhaj Mohamed Mustafa Yakub Baig, Respondent Nos. 2 and 4 were the trustees of Mominpada Masjid Yakub Baig Trust. Respondent No.1 Mr. Alhaj Mohamed

Mustafa Yakub Baig lodged first information report bearing CR No. I-290 of 1999 on 14.06.1999 with Panvel City Police Station under Sections 454, 457 and 380 of Indian Penal Code against unknown persons alleging that between 6.00 pm of 13.06.1999 to 8.30 am of 14.06.1999 unknown persons committed criminal trespass in the office of the said Trust and committed theft of important documents kept in the cupboard. The first informant/ Respondent No.1 has also given his supplementary statement to the police on 15.09.1999 stating that in the first information report, he failed to mention the amount which was stolen from the cupboard of the Trust and names of the suspected persons and gave names of Applicants and Respondent Nos. 2 and 4 as suspected persons in it.

4 The record further indicates that when the investigation of the said crime bearing No. I-290/1999 was in progress, the Respondent No.1 without disclosing the said fact of lodgment of crime by him, filed a private complaint bearing R.C. No. 147 of 2000 on 30.06.1999 in the Court of Judicial Magistrate First Class, Panvel. It is stated in the said complaint that, as the police did not take cognizance of his complaint filed earlier he has filed the said R.C. No. 147/2000. It appears from the pleadings from the said complaint that, the Respondent No.1 has improved his version in the complaint and has mentioned additional facts which were lacking in the first information report No. I-290 of 1999. The learned Magistrate by its order dated 30.06.1999 under Section 156(3) of Cr.PC. directed the police to investigate the complaint. The record further clearly indicates that

the cause of action for filing Crime No. I-290 of 1999 and the RC No. 147 of 2000 is same and/or similar. The police investigated it and after thorough investigation submitted "A-Summary" report before the Judicial Magistrate First Class, Panvel on 29.04.2000 in R.C. No. 147/2000 as well as C.R. No. I-290/1999. The said summary report is annexed at page No. 34 to the present application. In the summary report, the police have recorded their conclusion that, there was no evidence to reach to conclusion that the Applicants and Respondent Nos. 2 and 4 have committed the said crime though it is the fact that the said incident has happened and mentioned that it is committed by unknown persons. The police thereafter, have also filed a report under Section 169 of Cr.P.C. dated 07.09.2000 in C.R. No. I-290/1999 submitting that there is no evidence that the accused persons mentioned therein have committed the crime and they may be discharged under Section 169 of Cr.P.C. before the Judicial Magistrate First Class, Panvel. That Respondent No.1 thereafter, filed a Protest Petition on 13.02.2000 in the said Summary Reports. After perusing the complaint, Police Report, Protest Petition and after hearing the learned Counsel for the Respondent No.1, the Trial Court passed the impugned order dated 19.05.2000, issuing process against the Applicants and Respondent Nos. 2 and 4. The record further indicates that the Applicants thereafter filed an applications below Exhibits 31 and 33 for recalling the issuance of process of Order dated 19.05.2000 and for dismissal of complaint respectively. The learned Magistrate

by its order dated 16.02.2002 was pleased to dismiss both the said applications. In the premise, the present application is filed.

5 The record clearly indicates that, at the time of filing of private complaint bearing RC No. 147 of 2000, the Respondent No.1 has suppressed the fact that he has already lodged first information report No. I-290 of 1999 with Panvel City Police Station and impressed upon the concerned Magistrate for issuance of direction to investigate the said complaint under Section 156(3) of Cr.P.C. by its order dated 30.06.1999. The police after carrying out investigation in the said first information report No. I- 290 of 1999 and private complaint bearing R.C. No. 147 of 2000 has reached to the conclusion that though the alleged incident has occurred, there is no evidence that the Applicants and Respondent Nos. 2 and 4 are involved in the said crime. In the subsequent report under Section 169 of Cr.P.C. dated 07.03.2000, the police have categorically stated that as per the investigation carried out by them there is no evidence against the Applicants and Respondent Nos. 2 and 4 in the said crime and therefore, they may be discharged under Section 169 of Cr.P.C. It is to be noted here that in the protest petition dated 13.03.2000 filed in the said Summary Report dated 29.04.2000 and report under Section 169 of Cr. P.C. dated 07.03.2000, Respondent No.1 for the first time has admitted the fact that he has already lodged a crime with Panvel City Police Station on 14.06.1999 and the police have effected panchnama in that behalf. Thus, it is clear that the Respondent No.1 has approached various forums

for the same cause of action. It is further to be noted here that, Respondent No.1 by suppressing the material fact of lodgment of first information report No. I-290 of 1999 has chosen to file Complaint i.e. R.C. No. 147 of 2000 before the learned Judicial Magistrate First Class.

After perusing the record and taking into consideration the aforesaid facts, this Court is of the considered opinion that the Respondent No.1 has abused the process of law by filing the said complaint bearing R.C. No. 147 of 2000. A bare perusal of the impugned order dated 19.05.2000, issuing process against the Applicants and Respondent Nos. 2 and 4 clearly suggests that it was passed on the basis of irrelevant material and erroneous consideration. It further appears that the same is passed on the basis of the averments made in the complaint i.e. RC No. 147 of 2000 and without taking into consideration, the conclusions recorded by the police in their reports dated 07.03.2000 and 29.04.2000 respectively as stated herein above.

6 As noted earlier and in view of the above, according to me, the complaint i.e. R.C. No. 147 of 2000 is a clear abuse of process of law and does not deserve to remain on file to continue.

7 In view thereof, application is allowed in terms of prayer clauses (a) and (b).

(A.S.GADKARI, J.)