

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1122 OF 2017

Sikandar Ismail Gaiban and Ors.Petitioners

V/s.

Shaukat Allabkash Desai and anr.Respondents

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Mr. K.U. Nikam, Advocate for the petitioners.

Mr. Satish Borulkar i/by. Mr. A.M. Savagave, Advocate for
respondent no.1.

Mrs. M.M. Deshmukh, Additional Public Prosecutor for the
State, respondent no.2.

CORAM :- R.M.SAVANT, &
SANDEEP K. SHINDE, JJ.
DATE : 6TH SEPTEMBER, 2017.

P.C. :-

1. The petitioners who are the trustees of Jaysingpur

Jama Masjid Trust seek to challenge the First Information Report bearing C.R. No. 166 of 2016 registered against them on 13th August, 2016 with Jaysingpur Police Station, Kolhapur under Sections 420, 406, 408, 417, 426 read with Section 34 of the Indian Penal Code, at the instance of respondent no.1 herein. The Jaysingpur Jama Masjid Trust ("the Trust" for short) is registered under the Bombay Public Trusts Act, 1950 and also under Section 43 of The Waqf Act, 1995 bearing registration No. MSBW/KPR/132/2016. Respondent no.1 is one of the members of the Trust. On 27th July, 2016, respondent no.1 filed a criminal complaint against the petitioners in the Court of Judicial Magistrate First Class, Jaysingpur wherein he alleged that the Trust owns two properties and one of which is a "Culture Centre" is not registered with the Charity Commissioner. He alleged, the petitioners do let out Cultural Centre on rent and the income derived in the form of rent therefrom has not been accounted for by the petitioners for years together. The respondent, further alleged that the Trust has not been

registered under the Waqf Act and the details/particulars of the movable and immovable properties of the Trust are not being submitted to the Waqf Board. He further alleged, that neither the accounts of the Trust were audited nor the returns were filed from 2011 to 2015. He further alleged, that the petitioners were collecting the rent/premium by letting out the trust property for religious and cultural programmes and such income has been misappropriated. On these set of allegations, the Learned JMFC vide order dated 8th August, 2016 in exercise of powers under Section 156(3) of the Criminal Procedure Code directed the Jaysingpur Police Station to register the crime against the Trustees. This order culminated into FIR as stated hereinabove whereby the offence under Sections 420, 406, 408, 417, 426 read with Section 34 of the Indian Penal Code came to be registered against the present persons.

2. The Learned Counsel for the petitioner, has taken us through the complaint and submitted that the allegations

even if taken as true and at their face value do not make out any cognisable offence. He would further submit that the said Trust is also registered under the Waqf Act and pointed out the Registration Certificate produced at page-14 of the petition. He would further submit that the Learned JMFC has committed an error by exercising jurisdiction by directing the police to register the offence, inasmuch as, the allegations made in 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 petitioners. He submitted, at the highest, those would be the irregularities and do not disclose any cognisable offence. He has invited our attention to the provisions of Section 61 of the Waqf Act and submitted that the Learned Magistrate could not have directed the police to register the offence. He has invited our attention to the provisions of Sub-section 3 of Section 61 which provides that no Court shall take cognizance of the offence punishable under the Waqf Act, except on a complaint made by the Board or by an Officer

duly authorised by the Board in this behalf. He has also invited our attention to the provisions of Section 40 of the Waqf Act which provides that if any question arises, whether a particular property is Waqf property or not, the decision of the Board on such a question shall be final unless it is modified or revoked by the Tribunal. On this premise, he submits that in view of the provisions of Section 61 and Section 40 of the Waqf Act and in view of the provisions of Section 61 and in particular Section 61(3) and Section 40 of the Waqf Act, the Learned Magistrate has committed an error by directing the police to register the offence against the petitioners.

3. On the other hand, the Learned Counsel for respondent no.1 submitted that the powers of the police to enquire into the allegations of misappropriation is not taken away by the provisions of the Waqf Act. He submitted, facts alleged, disclose cognizable offences. He further submitted that the petitioners have not registered the properties with

the Waqf board. The Learned Counsel, therefore supported the order passed by the Learned JMFC.

4. Thus, the question that falls for consideration, is whether the facts alleged disclose and constitute cognizable offences. We have perused the complaint, wherein it is alleged that the petitioners being trustees, have failed to discharge their statutory obligations like that of not conducting the meetings, non-submission of the Accounts, non-registration of the property with the Waqf Board. It appears from the complaint, that the respondent had obtained the information from the Waqf Board under the Right to Information Act whereby he was informed that the petitioners had not filed the statement of accounts. In para-4 of the complaint, the respondent further alleged that from 2011 till 2015 the petitioners had not submitted the accounts of the trust and it amounts to a breach of trust. We are unable to comprehend as to how, non-submission of the accounts by the petitioners would amount to the offence of

criminal breach of the trust. In our view, at the highest, it would be an irregularity and nothing more than that. In the complaint, it is alleged that the petitioners have misappropriated the funds of the Trust and thereby caused loss to the Trust. Save and except, the bare statement of the respondent, (original complainant) there is nothing. He did not furnish any particulars as to how much rent the petitioners had collected during 2011 to 2015, from whom they had collected the rent; in other words, the respondent had not given better particulars which would prima-facie show that the amount of rent collected by them was misappropriated. Thus, after perusing the entire complaint we do not find the allegations made in the complaint disclose and/or reveal any cognisable offence.

. Be that as it may, even otherwise the Waqf Act is a complete Code and the authorities under the said Act are invested with the powers to set right the irregularities committed by the trustees by taking recourse to the appropriate provisions of the said Act.

That under Section 61 of the said Act, the Board is vested with the powers to take appropriate steps against the erring trustees. In the case in hand, after going through the allegations made in the complaint, even if they are taken at their face value and accepted in entirety, they do not *prima-facie* constitute offences under Sections 420, 406, 408, 417, 426 read with Section 34 of the Indian Penal Code. In the circumstances, the petition is allowed and the FIR No. 166 of 2016 registered with Jaysingpur Police Station passed by the Learned JMFC in Criminal Application No. 135 of 2016 is hereby quashed and set aside.

(SANDEEP K. SHINDE, J)

(R.M.SAVANT, J)