

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10832 OF 2016**

P. Ponraj

..Petitioner

Vs.

State of Maharashtra & Ors

..Respondents

Mr. J. B. Mishra for the Petitioner

Mrs. V. S. Nimbalkar AGP for the Respondent Nos.1 and 2

Mr. Anand Singh for the Respondent No.3

CORAM : R. M. SAVANT, J.

DATE : 11th JANUARY, 2017

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 16-4-2016 passed by the Learned Joint Charity Commissioner-II, Maharashtra, Mumbai, by which order, the application Exhibit 7 filed by the Respondent No.3 herein came to be allowed and resultantly the Appeal filed by the Petitioner against the order dated 21-11-2015 passed by the Assistant Charity Commissioner came to be dismissed.

2 The Petitioner herein had filed an application Exhibit 24 invoking Section 195 of the Criminal Procedure Code for taking action for perjury against the reporting trustee i.e. the Respondent No.3 herein. The Change Report in question is Change Report No.ACC/III/4091/2007. The said application Exhibit 24 filed by the Petitioner came to be rejected by the Assistant Charity Commissioner. The Assistant Charity Commissioner.

observed in clause 2 of the operative part of the said order that the Applicant shall be at liberty to file separate proceedings for inquiry and investigation against the perjury and contempt of court in respect of the affidavit of evidence and document in disposed of matter being Change Report No. ACC/II/2727/98.

3 The Petitioner aggrieved by the said order dated 21-6-2012 filed an Appeal before the Charity Commissioner being Appeal No.38 of 2012. In the said Appeal a preliminary objection was raised as regards the maintainability of the Appeal before the Charity Commissioner. The Charity Commissioner as can be seen from the order dated 3-5-2013 passed by him dealt with the said issue and held that Section 341 of the Cr.PC provides an Appeal to the court to which the court before whom perjury is committed is subordinate within the meaning of sub Section (4) of Section 195. The Learned Charity Commissioner held that since in the instant case the Assistant Charity Commissioner has not recorded any findings as required under Section 340(a) of the Cr.PC, he has left with no alternative but to remand the matter back to the Assistant Charity Commissioner for a denovo consideration of the said application. The Learned Charity Commissioner accordingly by his order dated 3-5-2013 remanded the matter i.e. Exhibit 24 back to the Assistant Charity Commissioner for a denovo consideration.

4 On remand the Assistant Charity Commissioner-III Greater Mumabi by order dated 21-11-2015 has rejected the said application on the ground of limitation. The Petitioner aggrieved by the said order dated 21-11-2015 challenged the same by way of an Appeal being Appeal No.592 of 2015. In the said Appeal, the Respondent No.3 filed the instant application Exhibit 7 questioning the maintainability of the Appeal. The Joint Charity Commissioner-II, it seems was assigned the hearing of the said application Exhibit 7, rejected the same on the ground that no Appeal would lie against an order passed in a Misc Application. The Joint Charity Commissioner was also of the view that offence of perjury is a criminal offence for which criminal proceedings can be adopted, therefore the Appellant can approach the Criminal Court. The Joint Charity Commissioner adverted to the fact that it was the case of the Petitioner i.e. the Appellant before him that the Appeal was not filed under Section 70 but has been filed under Section 341 of the Cr.PC which Appeal would not come within the jurisdiction of the said authority. The Joint Charity Commissioner has accordingly by the impugned order dismissed the Appeal on the ground of its maintainability.

5 The said issue about the maintainability of the Appeal filed against the order passed on an application filed for taking action of perjury against the Respondent No.3 was dealt with by the Learned Charity Commissioner in the earlier round by order dated 3-5-2013. The Learned

Charity Commissioner has by adverting to Section 341 of the CrPC has held that an Appeal would lie to a court to which the court before whom perjury is committed is subordinate within the meaning of sub Section (4) of Section 195. Hence the Appeal under Section 341 of the CrPC is an independent Appeal, whereas the Appeal filed under Section 70 is in respect of an order passed under the BPT Act. Hence the Joint Charity Commissioner has failed to exercise jurisdiction which was vested in him. The impugned order dated 16-4-2016 would accordingly have to be set aside and the matter would have to be remanded back to the Joint Charity Commissioner for a denovo consideration of the Appeal / Application filed by the Petitioner against the order dated 21-6-2012 passed by the Assistant Charity Commissioner. The Joint Charity Commissioner may follow the course of action as contemplated in Section 195 it comes to the conclusion that prima facie perjury is committed by the Respondent No.3. It is also open for the Respondent No.3 to take such defence as are available in law, in the Appeal as also against the perjury proceedings if adopted. The parties may appear before the Joint Charity Commissioner on 2-2-2017. The Joint Charity Commissioner thereafter fix the schedule as per his convenience and dispose of the said Appeal in accordance with law.

6 The Petition is allowed to the aforesaid extent and is accordingly disposed of.

[R.M.SAVANT, J]