

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 70 OF 2014

- 1) Chandrakant s/o Ramnarayan Kabara,
Age 51 years, Occupation Business,
R/o 2318, Tapidas Galli, Ahmednagar,
Dist. Ahmednagar.
- 2) Deepak s/o Bansilal Kabara,
Age 49 years, Occupation Business,
R/o Sarada Galli, Ahmednagar,
Dist. Ahmednagar.
- 3) Kisanlal s/o Ramkisan Bang,
Age 36 years, occupation Business,
R/o Tapkir Galli, Ahmednagar.
Dist. Ahmednagar.
- 4) Shivdas s/o Lalchand Daga,
Age 53 years, occupation Business,
R/o Sarjepura, Ahmednagar,
Dist. Ahmednagar.
- 5) Sunil s/o Badrinarayan Mudada,
Age 43 years, occupation Advocate,
R/o 5 Wansons Plaza, Court Galli,
Ahmednagar Dist. Ahmednagar.
- 6) Manoj s/o Bhavarlal Mudada,
Age 40 yers, occupation Business,
R/o Ahmednagar,
Dist. Ahmednagar.

...Petitioners.

Versus

- 1) The State of Maharashtra.
- 2) The Superintendent of Police,
Ahmednagar Dist. Ahmednagar.

3) The Police Inspector,
Topkhana Police Station,
Ahmednagar Dist. Ahmednagar.

4) Vijayshankar s/o Mulchand Mishra,
Age 50 years, Occupation Pujari,
R/o Khakidas Baba Math,
Laltaki, Ahmednagar
Dist. Ahmednagar.

...Respondents

Mr. S. S. Chapalgaonkar, Advocate for petitioners.

Mr. A. A. Jagatkar, Addl. Public Prosecutor, for respondents
No.1 to 3/ State.

Mr. M. S. Kulkarni, Advocate for respondent No.4.

**CORAM : T. V. NALAWADE &
SMT.VIBHA KANKANWADI. JJ.
DATE : 26-10-2018.**

ORAL JUDGMENT : (Per SMT. VIBHA KANKANWADI, J.)

1. Present writ petition has been filed by original accused persons intending to invoke the inherent powers of this Court under Section 482 of Code of Criminal Procedure as well as under Article 226 and 227 of the Constitution of India in order to quash and set aside the First Information Report registered with Police Station Topkhana, Ahmednagar vide Crime No. 510 of 2013, for the offences punishable under Section 341, 143, 147 of Indian Penal Code at the instance of respondent No.4.

2. The respondent No.4 – original informant had come with a case that, he is doing the work as a Pujari in Khakidas Baba Math

since 1982. He was performing Puja and other activities and for that purpose he was getting per month Rs.1000/- from Khakidas Baba Math Trust. The temple was renovated in the year 2007 and at that time he was told by one Chandrakant Ramnarayan Kabra and Shivdas Lalchand Daga that, he should perform Aarti only twice i.e. one in the morning and another in the evening and they would be appointing another priest to perform Puja. Thereafter the honorarium was cut and he was asked to leave the place which was given by the trust. However, he has not vacated it and also he is performing the Aarti in the temple. Thereafter, Chandrakant Kabra gave notice through advocate about four months prior to 09-11-2013 asking him to vacate the premises where he was staying and also to stop performing Aarti. He gave reply to the same. The trust has filed civil suit against him bearing Regular Civil Suit No. 177 of 2013. He appeared in the matter through advocate and the case is pending. It is stated that, 'Annakot Mahotsav' is going on in the Math for which ladies perform Aarti. He goes inside the sanctum of temple and do the Aarti but when he was in front of sanctum at about 05.15 p.m. on 09-11-2013, he was obstructed by the petitioners stating that, he should not perform Aarti, he should perform the Puja only in the morning and evening, and thereby he was restrained from going the sanctum, therefore he has lodged the report.

3. The petitioners contend that, they had received various complaints from the devotees against the informant, and therefore time and again he was given understanding. It is stated that, in the said Math there are various temples situated of different Lords and lots of devotees are coming for worshipping. Respondent No.4 abuses the devotees and therefore action was required to be taken against him. He is adamant in nature. They found respondent No.4 and his son carrying out digging activity on 08-08-2012. When he was asked about the same, he had abused the trustees in filthy language. In fact the trust had given one room which was 30 x 15, but the respondent No.2 is doing his business of astrology from that room and getting handsome income, which is without the prior permission of the trust. He is also having a Tavera car which he parks in front of the temple. That position of parking of car is also causing problems for the devotees. When he was asked to remove the car, at that time also he was adamant. He claims himself to be the main Pujari and tries to dominate. They have taken legal action by filing civil suit and the said suit is pending for adjudication. The trust had decided to celebrate Bhagwan Govardhan Annakot Mahotsav in the Math. A program was organised on 09-11-2013. Only female members were allowed to participate. When respondent No.4 came and started performing Puja the trustees therefor refused to go in the sanctum of the temple. Respondent No.4 started

quarreling in front of hundreds of people. Only to take revenge about the incident, he has filed the said case. Even one Shyamsundar Biyani has been made as an accused who had in fact died in 2011. The FIR is false, frivolous and bogus, and therefore they have prayed for quashing the same.

4. Heard Mr. S. S. Chapalgaonkar, Advocate for petitioners, learned Addl. Public Prosecutor Mr. A. A. Jagatkar for respondents No.1 to 3- State, and learned advocate Mr. M. S. Kulkarni, for respondent No.4. All of them have argued in support of their respective contentions. Perused the documents produced by the petitioners and also the affidavit-in-reply filed by respondent No.4. In his affidavit-in-reply almost the same contentions have been repeated by him and therefore they are not produced. He has also stated that, one more complaint has been lodged by his son against the petitioners bearing Crime No. 108 of 2014 on 25-02-2014. Both the parties have produced the bylaws of the trust.

5. The first and the foremost fact that is definitely required to be noted is that, offence is also registered against dead person. Shyamsunder Biyani expired in 2011 yet the informant says that he was also present and restrained him. It also appears that the FIR has been lodged with a ulterior motive. There appears to be dispute between the informant and the trust since 2007. The adamant

attitude of the informant - respondent No.4 can also be seen from the fact that in 2007 itself the honorarium was stopped by the trust and he was asked to vacate the premises given by the trust as well as to stop performing Puja. He was asked only to perform Aarti twice, one in the morning and another in the evening. But then still he says that, he has not vacated the premises and performing the Puja. The trust appears to have taken legal recourse by filing suit and it is pending for adjudication. We are more concerned with what happened on 09-11-2013 at about 05.15 p.m. The documents would show that, the Mahotsav was organised, which was organised mainly for ladies and it appears that still respondent No.4 was insisting that he should go in sanctum. If he would have been asked not to go, it will not amount to criminal restraint because it had no criminal intention behind the same. Another fact also required to be noted is that, the copy of the notice in respect of behaviour of the respondent would show that, complaints regarding his behaviour were received by the trust. We need not go into the bylaws of the trust because it would be a civil part and this Court cannot go and make any kind of comment on the civil right, if at all the respondent No.4 is having. As regards charge reports those have been produced before the concerned Charity Commissioner, also need not be considered here. Taking into consideration the fact that, even at the time of 2007 when the informant was allegedly asked not to

perform Puja, the present petitioners were on the trust. Therefore, when the FIR is filed with ulterior motive, the petitioners need not be asked to face the trial with such kind of material. Case is made out to invoke the powers of this Court under Article 226 and 227 of Constitution of India as well as under Section 482 of Code of Criminal Procedure. Hence, following order.

ORDER

- 1) Petition is hereby allowed.
- 2) Relief is granted in terms of prayer Clause 'B' to the petitioners.
- 3) Rule is made absolute on those terms.

(SMT. VIBHA KANKANWADI)
JUDGE

(T. V. NALAWADE)
JUDGE

vj gawade/-.