

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 653/2018

IN
CRIMINAL APPEAL NO. _____/2018

Madrasatul Muslemin Rabbani Trust

..VS..

Dr. Misbabulal Haque Ansari & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V. Paliwal, Advocate for applicant/appellant
Shri S.D. Abhyankar, Advocate for non-applicant/respondent nos. 1 to 7
Shri T.A. Mirza, APP for the respondent no. 8

CORAM : Z.A.HAQ, J.

DATED : 16/10/2018

Heard.

The non-applicant nos. 5, 6 and 7 had filed an application under Section 41A of the Maharashtra Public Trusts Act before the Deputy Charity Commissioner, Nagpur seeking relief in terms of following prayers:-

“It is therefore humbly prayed that this Honourable Court may kindly be pleased to pass the following orders.

1. *Impose immediate restrictions upon the functioning and managing of the Trust M.M. Rabbani Trust by appointing a Three members Committee who may take charge and manage the Trust till the final decision of the present Application.*
2. *A Committee comprising of Applicants and some other persons be appointed to inquire into the affairs of the Trust during the tenure of Non-Applicants on one hand and on the other, the Applicants be directed to undertake the Management of the Trust till the present Application is finally decided.*
3. *Impose immediate restriction for enrolling the new members and also reject their enrollment as the said activity is carried on illegally, secretly and un-Constitutionally by the Non-*

applicants for their self gains.

4. *Issue showcause Notice to the Non-applicants and take just, suitable and proper action against them for flouting the Rules and Violation of Trust Constitution and B.P.T. Act, 1950 too.*

5. *If necessary, appoint an Auditor to scrutinize the audit reports submitted by the Non-applicants time to time which is/are subject to be verification as the same appeared to be false, fictitious and fabricated.*

6. *All the reliefs, if not made through the medium of Prayer Clause be granted infavour of the applicants in the interest of Justice which this Honourable Court deems fit and necessary under the present circumstances.”*

In this application, it was pleaded before the Deputy Charity Commissioner that Mohd. Zahir Aghal (non-applicant no. 5) in Criminal Application No. 662/2005 and the other persons impleaded as the non-applicants in Criminal Application No. 662/2005 were acting in high handed manner, had removed the general members of the Trust illegally and unauthorizedly and had enrolled the new members surreptitiously. Various allegations were made against the non-applicants in Criminal Application No. 662/2005.

In this application, the respondent nos. 1 to 3 got themselves impleaded subsequently.

Criminal Application No. 662/2005 was disposed by the learned Deputy Charity Commissioner by the order dated 05/02/2014. The learned Deputy Charity Commissioner did not accept the allegations made in Criminal Application No. 662/2005 and did not grant reliefs as sought in Criminal Application No. 662/2005. The Deputy Charity Commissioner directed the accountant of the Public Trust office to scrutinize the audit report of the trust from 1994 onwards and submit report to the Deputy Charity

Commissioner. The order passed by the Deputy Charity Commissioner on 05/02/2014 is not challenged further by any party.

During pendency of Criminal Application No. 662/2005, the Public Trust through its Secretary and Mohammad Zafar (Secretary of the Public Trust) filed complaint under Section 500 r/w Section 34 of the Indian Penal Code against seven persons i.e. the applicants and the intervenors in Criminal Application No. 662/2005, that the allegations made in Criminal Application No. 662/2005 were with the intent of defaming the Public Trust and its office bearers. This complaint is dismissed by the learned Magistrate by the impugned judgment. The judgment passed by the learned Magistrate is challenged by the Public Trust by filing appeal and leave to file appeal is sought. The co-complainant/Mohd. Zafar Ansari has accepted the impugned judgment passed by the learned Magistrate and has not filed appeal.

After hearing the learned advocates for the respective parties and on going through the impugned judgment and the notes of evidence (copies of which are placed on record), I find that the conclusions of the learned Magistrate summed up in para no. 24 of the impugned judgment are based on proper appreciation of evidence on record and cannot be faulted with. Apart from this, I find that the applicants and the intervenors in Criminal Application No. 662/2005 had not made any imputations against the Public Trust. The grievance of the applicants and the intervenors in Criminal Application No. 662/2005 was against 11 persons who were impleaded as the non-applicants in

Criminal Application No. 662/2005. Except Mohd. Zafar Ansari (non-applicant no. 1 in Criminal Application No. 662/2005), the other 10 persons who were impleaded as the non-applicants in Criminal Application No. 662/2005 had not made any grievance in the matter. Though Mohd. Zafar Ansari was one of the complainant before the Judicial Magistrate First Class, he has accepted the judgment passed by the learned Magistrate and has not challenged it.

In the above facts, I see no reason to grant leave to the applicant/appellant (Madrastul Muslemin Rabbani Trust) to file appeal to challenge the judgment passed by the learned Magistrate dismissing the complaint filed under Section 500 r/w Section 34 of the Indian Penal Code and acquitting the accused.

The prayer for grant of leave to file appeal is rejected. Consequently, the appeal is also **rejected**. In the circumstances, the parties to bear their own costs.

JUDGE

Ansari