

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION 3446 OF 2018

1]Shahejadi Begam W/o Kalimullah Khan
Age 68 yrs, Occu-Household,
R/o Unique House, Ganesh Colony,
Near Collector Office
Aurangabad.

2]Mohammad Yunus S/o Mohd.Isamail
Age 72 years, Occu-Nil,
R/o Gadipura, Near Badi Dargah
Dist.Nanded.

... APPLICANTS
[Orig.Accused]

Versus

1] The State of Maharashtra

2] Naser Chaus S/o Sale Chaus;
Age 70 yrs, Occu-Business
R/o Mandai, Nanded
Tq.and Dist.Nanded

... RESPONDENTS
[Complainant]

Mr.R.D.Sanap, Advocate for applicant.
Mr.P.G.Borade,APP for Respondent State
Mr.G.R.Syed,Advocate for respondent no.2

**CORAM : T.V.NALAWADE,&
MANGESH S. PATIL, JJ.
DATE : 26/04/2019**

ORAL JUDGMENT [PER T.V.NALAWADE,J.] :

Rule. Rule is made returnable forthwith. By consent of parties,
Application is heard finally.

2] The proceeding filed for relief of quashing and setting aside FIR No.163/2001 registered in Itwara Police Station, Nanded for offence punishable under Section 406 read with Section 34 of the IPC and also for relief of quashing of Case No.1224/2006 presently pending in the Court of JMFC, Nanded which is also filed for similar offence.

3] This Court has gone through record collected by police. Crime is registered on the basis of report given by respondent no.2. He has made allegation mainly as against Kallimullah who is husband of applicant no.1. Applicant no.2 is real brother of applicant no.1. Allegations are made against main accused that he committed breach of misappropriation of the property of the school- madrasa. That property belongs to Hazrat Habib Mujtaba Bin Habib Jafar. It is alleged that the value of the property was around Rs.12 lakhs. Particulars of the articles are given. This Court has already granted relief of similar nature to daughter of Kallimullah Khan in Criminal Application No.3959/2006 (Bibi Hafez @ Irfana D/o Kallimullah Khan V/s The State of Maharashtra and another) by order dated 10/8/2018. This Court has observed that there is no evidence to prosecution to prove that such articles were handed over to the accused like Bibi Hafez Jamal @ Irfana. In the present matter when there are allegations mainly against husband of applicant no.1 that the articles were entrusted to the husband of applicant no.1 it will not be possible for the prosecution to prove that applicant no.1 or 2 had misappropriated those articles. This Court is avoiding to go into details in respect of articles as there is contention that entire record is missing. In view of all these circumstances, this Court holds that it will be futile exercise to ask present applicant to face the trial for aforesaid offences.

4] In the result application is allowed. The relief is granted in

terms of prayer Clause-B . Rule is made absolute in those terms.

(MANGESH S. PATIL,J.)

(T.V.NALAWADE,J.)

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