

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

CRIMINAL APPLICATION NO. 601 OF 2020

Sadiya Naheed w/o Mirza Azizullah Baig	
and others	... Applicants
Versus	
Anis Khan Dilawar Khan	... Respondent
....	
Mr. S. S. Kazi, Advocate for the applicants	
....	

CORAM : R. G. AVACHAT, J.

DATED : 17th JUNE, 2021

PER COURT :-

. Heard.

2. The challenge in this application under Section 482 of the Code of Criminal Procedure (Cr. P. C.) is to the order dated 07.09.2019, passed by the Court of Judicial Magistrate First Class, Aurangabad (Court No.19), on application, Exh-98 in Regular Criminal Case (R.C.C.) No.602 of 2012. By the impugned order, Shri Anis Khan Dilawar Khan, Secretary of Al-Faraan Education and Welfare Society, has been permitted to lead evidence on behalf of the said society (complainant).

3. The applicants herein are the accused in a criminal case, R.C.C. No.602 of 2012 pending before the Court of J.M.F.C., Aurangabad. It is a case instituted otherwise than on police report. The aforementioned education society is the complainant therein. The complaint has been signed and filed by its then Joint Secretary Shaikh Nasiroddin s/o Sk. Bashiruddin. It appears that the complainant being a charitable trust, election for members of the managing committee of the complainant society did take place. A new body appears to have come in power to manage the affairs of the said society. The application Exh-19, was therefore moved seeking the Court's permission to allow the newly elected Secretary to continue with the complaint and lead evidence therein. The trial Court allowed the said application. The applicants hereby take exception to the said order.

4. Shri S. S. Kazi, learned Advocate for the applicants would submit that the criminal case dates back to the year 2009. The respondent i.e. applicant of the application Exh-98 is no way concerned with the complainant society. The complaint was dismissed discharging the applicants herein long back. The said order was passed since the complainant did not appear before the

Court to lead evidence. He took me through the history of the litigation to ultimately submit that the impugned order is unsustainable in law. The original complainant cannot be replaced by a third person, who is no way concerned with the affairs of the complainant society.

5. I have considered the submissions advanced by the learned Advocate. Perused the complaint and the related documents, so also the impugned order. The complaint has been filed by its then Joint Secretary. It has been averred in application Exh-98 that the applicants have deliberately kept the then Joint Secretary, away from the Court proceedings. The delay is, therefore, attributed to the applicants. The applicants are alleged to have committed offences punishable under Sections 420, 463, 468, 471 read with 34 of the Indian Penal Code. As such, it is a warrant case instituted otherwise than a police report. Section 244(1) of Cr. P. C. empowers the Magistrate to proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. The section even authorises the Magistrate to examine a person as a witness who has not been cited as a witness to be examined in support of the prosecution.

6. Admittedly, the complaint has been filed by an institution, a registered charitable trust. Due to change in the management, a new body of persons has come in the power. Since the signatory (Secretary) of the complaint consistently did not appear before the Court to proceed with the case, the newly appointed Secretary moved application Exh-98 and sought permission to lead evidence on behalf of the complainant-society. The learned Magistrate, after having perused the change report and on verification of the fact that the applicant who moved application Exh-98, is the newly appointed Secretary of the complainant-society, granted application Exh-98.

7. I do not see any illegality in the impugned order. I have, therefore, even no reason to issue notice in this matter. The application is sans merit. The same is, therefore, liable to be dismissed. The application is, thus, dismissed.

8. The trial Court is requested to expedite hearing of the matter.

[R. G. AVACHAT, J.]