

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1135 OF 2021

1. Farukh s/o Jalaloddin Syed
Age: 43 years, Occu.: Business,
R/o. Galli No.12-B, Hadapsar,
Pune, Taluka and Dist. Pune.
2. Mahboob Abdul Gaffar Shaikh
Age: 46 years, Occu.: Business,
R/o Kawadewasti Malidwada,
Hadapsar, Taluka Haveli,
Dist. Pune
3. Farukh Dilawar Maniyar
Age: 49 years, Occu.: Business,
R/o. Kawadewasti Maliwada,
Hadapsar, Taluka Haveli,
Dist. Pune
4. Anwar Shamshuddin Syed,
Age: 40 years, Occu.: Business,
Galli No.12-B, Hadapsar,
Pune, Taluka and Dist. Pune

... Applicants

Versus

1. The State of Maharashtra
Through Cantonment Chavani
Police Station,
Aurangabad, Tq. & Dist. Aurangabad
2. Mohamad Amin Syed,
Age: 65 years, Occu. Business,
R/o. Servey No.75/2, Syed Nagar,
Mohamadwadi, Road No.9, Hadapsar,
Tq. Haveli, Dist. Pune

... Respondents

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Mr. Yogesh D. Kale, Advocate for applicants.

Mr. B. V. Virdhe, APP for respondent No.1 – State.

Mr. Amay Sabnis h/f Mr. G. D. Shaikh, Advocate for Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

**RESERVED ON : 25th August, 2022
PRONOUNCED ON : 13th September, 2022**

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. The applicants have prayed for quashment of the FIR filed against them by respondent No.2 with Cantonment Chavani Police Station, Dist. Aurangabad.

2. Heard learned Advocate Mr. Y. D. Kale for the appellant, learned APP Mr. B. V. Virdhe for respondent No.1 – State and learned Advocate Mr. Amay Sabnis holding for learned Advocate Mr. G. D. Shaikh for respondent No.2.

3. It has been vehemently submitted on behalf of the applicants that respondent No.2 has filed FIR on 10.03.2021, which came to be registered vide Crime No.90 of 2021 with Cantonment Chavani Police Station, Dist. Aurangabad for the offences punishable under Sections 420, 467, 468, 471, 406 read with Section 34 of Indian Penal Code. The informant contends that his father Amin Syed was the trustee of Hazrat Abdul Kadir Saheb Peer Dargah, Hadapsar, Tq. Haveli, Dist. Pune. He was informed by his relative Ayyaz Salauddin Sayyad that he had come to Waqf Board at Aurangabad for his work on 07.01.2021, wherein it

was informed that some matter belonging to Hazrat Dargah is pending in Waqf Board. Therefore, he took certain documents by way of certified copies and then approached informant once again on 15.02.2021 stating that the present applicants had given proposal to the Waqf Board in respect of the trust. He asked the informant as to whether he has signed on such proposal. Informant could notice that there is signature in English, which is stated to be made by informant and there was also his photo. According to respondent No.2, he never signs in English, but he always signs in Marathi. Informant had then come down to Aurangabad on 23.02.2021 and saw the original documents in the Waqf Board. It was informed to him that even the public notice had issued in view of Section 69 of the Waqf Act, 1995. Therefore, respondent No.2 says that the applicants have forged the documents and by stating that they are genuine documents have used it before the Waqf Board.

4. The learned Advocate for the applicants has further submitted that the trust was registered on 31.12.1952 and respondent No.2 or his father never took the elections. In fact, other trustees had expired and, therefore, it was necessary that he ought to have inducted other trustees. In view of the same, the said application under Section 69(1) of the Waqf Act, 1995 for framing/accepting proposed scheme for the Waqf Institution was filed. That application is still pending before the

Waqf Board. It could not have, therefore, given any kind of wrongful gain to the applicants or wrongful loss to respondent No.2. There was no question of cheating respondent No.2 when the application is still pending. It would be a futile exercise to ask the applicants to face the trial.

5. Learned APP strongly objected the application and pointed out the affidavit-in-reply of Munir Adam Shaikh, who is serving as State Examiner of Documents (Handwriting Expert) CID, Maharashtra State, Aurangabad, who had examined the documents with the admitted signatures. He has opined that those signatures on the disputed documents do not match with the admitted signatures, rather they are in different handwriting. There is ample evidence against the applicants and since investigation was pending, the charge-sheet was not filed. All those acts have been done by the applicants to gain control over the trust and they have forged the documents for that purpose. Hence, this is not a fit case, where the FIR should be quashed.

6. The learned Advocate appearing for respondent No.2 relied on the affidavit-in-reply of respondent No.2, which is almost the replica of the FIR and further he has also relied on the order passed by the learned Additional Sessions Judge, Aurangabad cancelling the anticipatory bail

granted to applicants viz., Farukh Syed, Farooque Maniyar and Anwar Syed. However, this Court in Criminal Writ Petition No.857 of 2021 has reversed that order, but then continued it till the filing of the charge-sheet and after the filing of the charge-sheet, the petitioners have been directed to file the application for regular bail. This factor also shows that how the applicants are interested in harassing the informant. It was also pointed out that as against the applicants, another offence has been registered at Kondhwa Police Station, Dist. Pune bearing Crime No.393 of 2021 on 22.05.2021 for the offences punishable under Sections 420, 467, 468, 471, 447, 120-B, 379, 504, 506 read with Section 34 of Indian Penal Code.

7. At the outset, it is required to be noted as to whether the applicants have made out a case for exercising the powers of this Court under Section 482 of the Code of Criminal Procedure, which has to be in fact, rarely exercised taking into consideration the parameters those have been laid down by the Hon'ble Apex Court. If we consider the FIR, it clearly states that the informant was unaware about any proceedings those were taken up before the Waqf Board, but he came to know about it on 07.01.2021 through his relative. This Court cannot go into the aspect as to who has right in the trust and whether respondent No.2 erred in not holding the elections in time. It is for the appropriate

Courts to consider the same, but the fact remains is that an application under Section 69(1) of the Waqf Act was filed by in all 5 persons i.e. the present applicants as well as in the name of informant. It was declared to the Waqf Board that all the applicants are members of first board of trustees and proposed ideal scheme was prayed to be accepted and framed. The said application is stated to have been signed by all including the person in the name of the informant. According to the informant, he never signs in English, but the application and the other document along with it bears signature in English and even the photograph of respondent No.2. No doubt, the said application is stated to be still pending, but when by way of handwriting experts opinion it has come on record that the said signature which is alleged to have been made by respondent No.2 on the application does not match with his admitted signature, then a *prima facie* case has been shown that it is a forged document or amounting to making of false document. Further, it may not attract the exclusive ingredients of Section 406 of Indian Penal Code at this stage, but definitely it will have to be considered by the learned Trial Court as to whether such act of preparation of false document would have been the attempt to cause misappropriation. Same is the case with offence of cheating. In fact, the Waqf Board which is established under the Waqf Act is a Court where the evidence would

be taken, but then using a forged or false document as genuine will have to be viewed seriously. Now, the handwriting expert's opinion has also come and, therefore, when there appears to be *prima facie* case against the applicants, this is not a fit case where the inherent powers under Section 482 of the Code of Criminal Procedure should be exercised. The case does not fall within the parameters laid down in *State of Haryana and others Vs. Ch. Bhajanlal and others, [AIR 1992 SC 604]* and, therefore, the application stands rejected.

[RAJESH S. PATIL, J.]

[SMT. VIBHA KANKANWADI, J.]

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