

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 622 OF 2023

1. Shyam Vitthal Pawar
2. Dhulappa Ngnathappa Jaishette
3. Jeevan Tamanappa Mengshette
4. Mahadev Govindrao Gaikwad
5. Sanjay Pandurangrao Vedpathak
6. Nagnath Salbayya Swami

Applicants

Versus

State of Maharashtra

Respondent

Mr. S. C. Bora, Advocate for the applicants.
Mr. G. O. Wattamwar, APP for the State.

CORAM : R. M. JOSHI, J.
RESERVED ON : 13th JUNE, 2023.
PRONOUNCED ON : 21st JUNE, 2023.

PER COURT :

1. Applicants are apprehending arrest in connection with Crime No. 060/2023 registered with Gandhi Police Station, Dist. Latur pursuant to the order passed by the Judicial Magistrate First Class, Latur, in Criminal Misc. Application No. 1257/2023 for the

offences punishable under Sections 191, 193, 406, 409, 420, 465, 467, 468, 471, 120B of the Indian Penal Code.

2. Kailas Rambhau Dongre and another gave complaint to the learned Magistrate by stating that in the year 1998, a trust was formed in the name of Jai Bhawani Charitable Trust in order to manage the temple of Goddess Bhawani. It is alleged that annually the temple used to receive huge income by way of donation, gifts etc. it is further alleged that for the purpose of construction of new temple, donations were asked. When the Chairman and other office bearers of the trust were questioned about the expenditure done for the said purpose, it was informed that no income was received and that they had spent amount of Rs. 3,00,000/- to Rs. 4,00,000/- from their pocket. As there was a doubt about this explanation, informant started making enquiry and during the course of enquiry, it was found that false documents were submitted in the proceeding before the Charity Commissioner. It is specifically alleged that the election of the trust is also conducted on the basis of false documents and declarations. It is alleged that in support of charge report in Enquiry no. 772/2021-2022, consent letter was issued bearing signatures of four persons who were already dead. Thus, it is the contention of the

informant that documents were forged. Allegation is also made about misappropriation of cash as well as ornaments donated to the Goddess by the devotees. On the basis of these allegations, complaint was lodged.

3. Learned counsel for the applicants state that there is a bar granted by Section 195 of the Code of Criminal Procedure to take cognizance in respect of another complaint except on the complaint of the public servant in respect of offences described in Section 463 or punishable under Sections 471, 475 or 476 of the Indian Penal Code. It is submitted that though there is allegation that consent letter is forged by the applicants and therefore, the offence of forgery is made out against them and such offence is complete with forgery of said documents, it cannot be considered a ground for filing private complaint by passing provisions of Section 195 of the Code of Criminal Procedure. In support of his submissions, he placed reliance on judgment of Hon'ble Apex Court in the case of Bandekar Brothers Pvt. Ltd. and others vs. Prasad Vassudev Keni and others, AIR 2020 SC 4247, wherein it is held that if in the course of same transaction two separate offences are made out and for one of them Section 195 of the Code of Civil Procedure is not attracted and it is

not possible to split the offences, drill of Section 195(1)(b) of Code of Criminal Procedure must be followed. Thus, according to him, the complaint is under Section 156(3) of the Code of Criminal Procedure and the offence is registered pursuant to the directions passed invoking said provision itself is not valid, the present applicants deserve anticipatory bail.

4. Learned APP opposed the application by submitting that perusal of investigation papers clearly shows that consent letter filed before the Charity Commissioner in proceeding for change report bear signature of persons who are already dead. To support said submissions, date of consent letter as well as death certificate is pointed out to this Court. According to him, the offence of forgery is already complete and therefore, there is no impediment for filing complaint in respect of the said offence.

5. In order to appreciate the aforesaid submissions, certain facts as they appear from record needs to be considered. Perusal of the First Information Report shows that it is specifically alleged therein that during the enquiry with the office of Charity Commissioner, it was revealed that the accused prepared bogus

documents in respect of election and submitted the list of elected members. There is further allegation that in the proceeding of change report consent letter was filed bearing signatures of deceased persons. It is specifically alleged that by forging said consent letter, not only concerned persons but also the Court is cheated. The contents of the complaint clearly indicate that the purpose for filing of the alleged fabricated document i.e. consent letter was to get change report approved. Prima facie, therefore, the purpose of filing of the said documents is to get order and therefore, if such allegation is true then it amounts to causing interference in the administration of justice. In that case, the provisions of Section 195 of the Code of Criminal Procedure would attract.

6. The Hon'ble Apex Court in the case of Bandekar Brothers (supra) has taken into consideration the entire case law and has held that in case it is not possible to split both the offences i.e. offence of forgery of documents and the offence of producing the same before the Court or the authority to make the said authority to believe the same and to pass order, in such eventuality the drill of Section 195(1) (b) of the Code of Criminal Procedure must be followed.

7. As discussed hereinabove, the allegation against the present applicants is that they prepared consent letter by forging signature of deceased persons however, as per the contents of the complaint, said forgery has been made in order to get favourable order in enquiry of change report. Prima facie, this Court is of the view that the bar as contemplated by Section 195 of the Code of Criminal Procedure may apply to the present case. If it is to be held that no Court shall take cognizance of any offence of this nature which is in relation to a proceeding before the Charity Commissioner without compliance of provisions of Section 195 of the Code of Criminal Procedure, then in this eventuality there would be serious question/doubt about tenability of complaint. If the applicants on the basis of such doubtful complaint, in terms of maintainability thereof, are send to the custody and finally it is held that said complaint was invalid to take conizance thereof, applicants cannot be compensated. In this peculiar circumstances, liberty of applicants needs to be protected.

8. At the same time, it cannot be ignored that for the purpose of effective investigation, handwriting of the applicants if found necessary to be obtained by the Investigating Officer to

ascertain as to whether there is a case of forgery, appropriate directions need to be issued. This aspect can be taken care of by directing the applicants to appear before the Investigating Officer and give specimen writing/signature, if asked for. For this purpose, applicants shall be deemed to be in the custody of police.

9. In the circumstances, application is allowed. Hence, the following order :-

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest of applicants in connection with Crime No. 60/2023, registered with Gandhi Police Station, Dist. Latur, for the offences punishable under Sections 191, 193, 406, 409, 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, they be released on bail on furnishing PR Bond of Rs. 15,000/- (Rs. Fifteen Thousand only) each with one solvent surety each in the like amount.
- (iii) They shall attend the concerned police station as and when called by the Investigating Officer.
- (iv) They shall not contact the witnesses directly or indirectly.

(v) They shall not interfere with the evidence in any manner whatsoever.

(vi) They are further directed to cooperate the investigating agency for further investigation.

(R. M. JOSHI)
Judge

dyb