

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

CRIMINAL WRIT PETITION NO. 1237 OF 2022

Pradip s/o. Martandrao Jadhav .. Petitioner
Age. 58 years, Occ. Astrologist and Priest,
R/o. Plot No.32, Jyotish Bhaskar Building,
Block No.79, New Rangraj Nagar, Solapur,
Dist. Solapur.

Versus

The State of Maharashtra .. Respondent
Through Police Station Pathardi,
Tq. Pathardi, Dist. Ahmednagar.

Mr.Sambhaji S. Tope, Advocate for the petitioner.
Mr.Y.G. Gujarati, APP for the respondent/State.
Mr.J.V. Patil, Advocate for assist to APP.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	24.04.2023
PRONOUNCED ON	:	16.06.2023

ORDER :-

01. This petition by original accused is directed against an order passed by the learned Sessions Judge, Ahmednagar dated 05.09.2022 dismissing the revision petition thereby maintaining the order passed by the learned JMFC, Ahmednagar rejecting an application for discharge.

02. Facts giving rise to this petition, in short, are that the petitioner is an Astrologer having Doctorate in Astrology from Varahmihir Jyotish Mukta Vidyapeeth. He also does spiritual works. He was given an order by a trust viz. Jagdambadevi Sarvajanic Trust (for short “the trust”) to supply gold Yantras considered to be auspicious. Said Yantras were to be used in the temple of Goddess at Mohta in the basement. For that he was given making charges of Rs.24,85,000/- and 1890 grams gold. Said order was placed with him by the trust headed by the District Judge, Ahmednagar as ex-officio Chairman of the trust. He carried the work of making such Yantras and provided those Yantras to the trust. There is no complaint about non-supply of any of the Yantras.

03. However, later-on on 05.02.2021 a complaint came to be lodged by one Avinash Patil, Working President of Andhashradha Nirmulan Samiti, (ANIS i.e. Superstition Eradication Committee) that by providing such Yantras the petitioner has committed a crime under section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 (for short “the Black Magic Act”)

and also under sections 406, 409, 420, 120-B of the Indian Penal Code.

04. There is little background behind filing this complaint that the Mohta Devi temple is a temple famous for goddess Mohta. There is also a trust looking after the management and affairs of the said trust. Said trust is headed by a District Judge. This trust in a meeting dated 12.09.2010 decided to have gold Yantras for use in the basement of the temple. The Chief Executive Officer of the Trust decided to have 91 Yantras, namely, Yogini, Kalbhairav and others. As there are no persons working in this field, the Chief Executive Officer, recommended to the trust to give the said work to the present petitioner. Accordingly, by letter dated 15.09.2010 said work was given to the present petitioner. Said Yantras are stated to be for spiritual and religious purpose. The work as per order was carried out. There was no complaint from the persons concerned with the trust or the devotees of the temple.

05. One Namdeo Sahebrao Garad a Social Worker and trustee at the relevant time filed Criminal Writ Petition No. 691 of 2019 in this Court. In the said petition a prayer was made to take action against the trust for violating

section 3 of the Black Magic Act. The petitioner was selected by the said trust for doing the work of making Yantras. There were further allegations that there is no proper account of the gold that was given to this petitioner for making of those Yantras. It was stated in the petition that some persons working with ANIS raised voice against this act. They had even tried to lodge a complaint with the police on 07.03.2017. Since no cognizance was taken therefore the petition was filed. This Court in the said writ petition issued directions to the concerned police station to register a crime for the offence of conspiracy, cheating, misappropriation, breach of trust and also for the offence punishable under the Black Magic Act and other provisions as police may feel fit. The District Superintendent of Police was directed to see that the investigation is made by the police officer not below the rank of Additional Superintendent of Police or Dy. Superintendent of Police. The workers of ANIS were at liberty to give more information to police for collecting relevant information and record. Accordingly FIR came to be lodged against the Chairman of the trust, trustees and CEO of the trust. This petitioner is not shown as accused in the FIR. During the course of investigation, this petitioner is shown as accused. After lodging of the FIR, police carried out investigation. The charge-sheet came to be filed. The petitioner filed

application for bail. The bail application came to be allowed by this Court. Thus, for some time the petitioner was in jail. After filing of the charge-sheet, now case is registered as RCC No.486 of 2021.

06. The petitioner filed application below Exh.53 seeking discharge under section 239 of the Cr.PC. Said application came to be opposed by the State, stating that by this act the Trustees wanted to spread stories about Yogini Yantra and Tantra Vidya i.e. similar to black magic. The learned CJM, Ahmednagar by order dated 13.07.2022 rejected the said application. The petitioner, therefore, filed Criminal Revision Application No.70 of 2022 in the Sessions Court at Ahmednagar. As stated, the learned Sessions Judge dismissed the revision and confirmed the order passed by the learned JMFC. The petitioner is, therefore, before this Court by way of this petition.

07. The petitioner submits that he is well qualified Astrologer and is well known in the society for his knowledge and work. The trust, which placed the order is headed by the District Judge as ex-officio Chairman. The Civil Judge, Pathardi, Dy. Conservator (Forest), the Tahsildar and Block Development Officer are the ex-officio members of the said trust. Said trust is

thus managed by well qualified persons. It is the trust which took decision to install 91 Yantras. One Ravindra Shinde, who was to look after the work of renovation of the temple, suggested name of the petitioner. It is the trust who appointed the petitioner without any application by him. The trust had consciously decided to place order with the petitioner without calling for bid, since there are no persons doing such a work. The petitioner has only carried out the work pursuant to the order placed with him. He submits that the order was placed in 2010. He was appointed on 15.09.2010. The Black Magic Act came into force from 20th December, 2013. The work given to the petitioner was completed in 2012 itself. His legal submission, therefore, is that in view of clause (1) of Article 20 of the Constitution of India, the petitioner cannot be prosecuted for the act allegedly done by him prior to coming into force of the Act. He submits that thus the proceeding against him is clearly an abuse of process of law. There is no material against him to proceed with the trial. He submits that application ought to have been allowed by the learned Trial Court. Even the Revisional Court did not appreciate this main ground. He submits that now for the acts done in 2011, the complaint was tried to be filed in 2017. From the FIR itself he submits that the period of offence is shown to be from 01.01.2010 till 31.12.2011. He

submits that the Chairman of the Trust is already protected by the judicial order. From the charge-sheet itself it is seen that all the Yantras are already given to the trust. There is no complaint that any gold is retained by him. As per report dated 18.02.2021, the difference shown in the gold received by him and given by him to the trust is only 18.57 grams. Thus, it is submitted that considering the quantity of gold that was given to him i.e. 1817 grams, this cannot be said to be misappropriation.

08. The learned APP opposes the petition. He submits that the appointment of the petitioner by the trust itself was under cloud of doubt. There were no bids invited by the trust. Directly a resolution came to be passed by the trust and order was given. The petitioner was appointed directly by the Architect. He submits that the Yantras were being installed even after 2013 and thereby the provisions of the Black Magic Act are attracted. He further submits that for doing such a work, permission from Charity Commissioner was required. No such permission is taken and therefore offences are attracted. He submits that trial is therefore necessary for the offence. He submits that for the work of Yantras, gold was given to the petitioner that was more than required. Thus, there is misappropriation

appearing on the face of record, by inviting attention to the receipts of gold by the petitioner from G.N. Hallmarking's, Pune. All these documents are now in possession of the investigating machinery showing that the offence is clearly made out. He invited attention of the Court to some of the statements in the charge-sheet to show involvement of accused No.5 and this petitioner. From statement of one Anand, recorded on 01.05.2013, he submits that he mentioned about variance in the quantity of the gold that was given to the petitioner and received back by the trust. Some work was done even in 2013 i.e. after commencement of the Act. The learned APP thus submits that the Court has rightly considered the matter and has rightly rejected the application. He further submits that one of the Yantras, namely, Hanuman Yantra is still to be installed and thus the work is still incomplete. So far as the Black Magic Act is concerned, he submits that the act of present petitioner comes under Item Nos.2,3 and 5 of the schedule to the Act.

09. To the arguments of learned APP, the petitioner replied that the fact is not denied that it was a decision by the trust to install the Yantras. Thus, the petitioner is neither a person who took decision nor a person who placed the order. He invited attention of this Court to the communication

from the charge-sheet, wherein the Chief Executive Officer had directed the Architect to complete the work at the earliest. Doing the work as per the order, cannot be said to be an offence. From the bank statement he submits that it is clear that practically all the material is used for the Yantras and same is given to the trust. The activities as alleged continued even after 2013 were towards fulfilment of order and cannot be said to be giving cause of action.

10. On all these materials, first thing needs to be considered is that, it is purely a question of law that as to whether there is violation of the Black Magic Act. From the notification itself it is seen that the said Act came into force from 20th December, 2013. In view of clause (1) of Article 20 of the Constitution, this Court finds that the order was placed in 2010. The work was to be completed that too under the orders of the trust. The decision was also taken by the Trust. The petitioner was given only the work of making of such Yantras. There is no case that it is this petitioner who had persuaded the Trust or convinced about so called effects of the Yantras. There is no question of his promoting said Yantras or any practices as sought to be prevented by the Black Magic Act, as the act alleged to be committed, when the Act was not in force, there is no question of violation of the Act. Sub-section (2) of section 3 of the

said Act is reproduced below :-

“3. (1) xxxxx

(2) From the date of coming into force of this Act, commission of any act of human sacrifice and other inhuman, evil and aghori practices and black magic and any advertisement, practice, propagation or promotion of human sacrifice and other inhuman, evil and aghori practices and black magic, in violation of the provisions of this Act, by any person by himself or through any other person shall constitute an offence under the provisions of this Act, and the person guilty of such offence shall, on conviction, be punished with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to fifty thousand rupees.

xxxxx”

11. Thus, it is clear that the acts sought to be prevented were the acts done after the date of coming into force the Act. Further it says about any advertisement, practices, propagation or promotion of human sacrifice and other inhuman, evil and aghori practices and black magic, in violation of the provisions of the Act. In this case this Court finds that there is no advertisement made by this petitioner. There is also no case that the petitioner practices, propagates or promotes of human sacrifice and other inhuman, evil and aghori practices and black magic. The act of preparing Yantras and providing them to temple cannot be said to be inhuman practices or inhuman act. It will not amount to evil or Aghori practices and black

magic. The allegation was not substantiated by showing all these things present in the act of the petitioner. This Court accepts the contention of the petitioner even on the ground, as alleged offence has taken place before the commencement of the Act. Secondly the act of the petitioner cannot be said to be an act to promote, propagate or practice, propagate or promotion of human sacrifice etc.

. So far as submission of the learned APP that the work of providing Yantras continued even after coming into force the Black Magic Act is concerned, this Court finds that the role of the petitioner was only to provide Yantras as per order placed with him. A person is not expected not to complete the order once it is placed. Not completing the order would make the petitioner liable for action of non-fulfilling the order. For that reason, even if the Yantras are given even subsequent to the Act coming into force by itself will not attract provisions of the Black Magic Act.

12. Looking at the FIR as it is, all the allegations are made against the trustees and the CEO. There are no specific allegation against the petitioner and therefore he is not shown as accused in the original FIR. He is added

subsequently as accused in the case. The main grievance of the complainant is regarding the offence under the Black Magic Act and for non-observance of the procedure before placing order with the petitioner. The petitioner cannot be blamed for the acts of the trustees.

13. So far as allegations under section 409 are concerned, this Court finds that that from the allegations, it does not appear that the offence under section 409 of the IPC is made out. There is no allegation in the complaint that the petitioner was entrusted with property i.e. gold in the capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent as required under section 409 of the IPC.

14. So far as offence under section 406 of the IPC is concerned, it is seen that there is material on record showing that about 18 gram gold was found less in the Yantras. So far as offence under section 120-B of the IPC is concerned, this Court finds that the FIR and material in the charge-sheet lacks in material particulars to show that the petitioner has committed any offence of criminal conspiracy. From the material it is seen that it is the trust who placed order with the petitioner. Prior to placing of the order, there is nothing

to indicate that it is this petitioner who contacted any of the members of the trust or the officer to place order for doing job of making Yantras. It appears from the communication of the trust that the Chief Executive Officer, on his own informed the trust that the petitioner is an expert in the field and therefore he should be assigned with the work. Therefore, section 120-B of the IPC is not attracted.

15. Thus, this Court finds that the petition deserves to be allowed.

Hence, following order :-

ORDER

- a) The Criminal Writ Petition is partly allowed.
- b) The order passed by learned Sessions Judge dated 05.09.2022 in Criminal Revision Application No.70 of 2022 is hereby quashed and set aside, to the extent of the offences punishable under section 3 of the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 and sections 409 and 120-B of the Indian Penal Code are concerned.
- c) The application Exh.53 in RCC No.486 of 2021 stands allowed to the above extent.

[KISHORE C. SANT, J.]