

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

62 CRIMINAL REVISION APPLICATION NO.149 OF 2021

ABDUL KARIM KASAM KACHHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Applicant : Mr. Naseem R. Shaikh.
APP for Respondent/s-State : Mr. K. S. Patil.
Advocate for Respondent Nos.2, 4 And 6 to 14 : Mr. A. N.
Nagargoje.

CORAM : S. G. MEHARE, J.
DATE : 13.03.2023

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and the learned counsel for the remaining respondent Nos.2, 4 and 6 to 14. Respondent Nos.3 and 5 had been served, but did not appear.
2. The applicant has impugned the order of learned Additional Sessions Judge, Bhusawal in Criminal Revision No.45 of 2019, dated 09.09.2019.
3. The applicant had filed a complaint before the learned Judicial Magistrate First Class, Bhusawal alleging that the respondents being the trustee of the trust had misappropriated the fund and shown the excessive expenses before the auditor.

The figure shown under the head of steel in the audit report did not match with the figures supplied in an information under R. T. Act.

4. The learned Judicial Magistrate First Class after verification of the complaint concluded that the *prima facie* case is made out and issued a process under various sections of the IPC.

5. In a revision, the learned Additional Sessions Judge has discussed the various provisions of the Maharashtra Public Trust Act. He is of the opinion that unless the Charity Commissioner, who is the guardian of the Trust, opined that there was a misappropriation of the property of the public trust, the action could not be taken under criminal law.

6. Learned counsel for the applicant would argue that the learned Additional Sessions Judge ignored the principles considering complaint under Section 156. *Prima facie* case was made out against the applicant but instead of considering those principles, he discussed the provisions of the Maharashtra Public Trust Act and dismissed the complaint. The order is erroneous on its face. Therefore, it is liable to be set aside.

7. The learned counsel for respondents Mr. Nagargoje supported the impugned order. He argued that the Charity Commissioner is the controlling authority for the property, accounts and protection of the trust property. Unless, he opines that there was a an illegality, no one can seek the remedy directly under the Criminal Law. The applicants should have approach before the Charity Commissioner first and get appropriate orders. It is a case of its own kind. The complaint was filed mischievously. The impugned order is legal, proper and correct.

8. It is not in dispute that it was a dispute between past and present trustees. The allegations as discussed above were regarding the amounts spent over the steel which differs in the information under Right to Information Act and the audit report. The Charity Commissioner is a guardian of the trust. He has various powers to verify the accounts and direct for the special audit. The Charity Commissioner has powers to fix the liability on any of the trustee for causing the loss to the trust property. He may also make an inquiry about the misapplication of the public fund. Considering the said provisions of the said law, the Court is of the view that the Charity Commissioner is the first authority to take the

cognizance of any mismanagement, misapplication or loss caused to the property of the trust. The Charity Commissioner has also the powers to ask for a special audit report if he gets suspicious about mismanagement and causing the loss to the trust by trustees. In the circumstances, the Court is of the view that instead of dismissing the complaint, it ought to have been disposed of observing that the complaint is premature. However, by the impugned order, the learned Additional Sessions Judge has closed down the doors for the applicant to approach before the criminal Court at the proper time. On this ground, the impugned order is liable to be set aside.

9. In view of the above discussion, the following order is passed:

ORDER

- (i) The Criminal Revision Application is allowed.
- (ii) The impugned order passed by the learned Additional Sessions Judge, Bhusawal in Criminal Revision No.45 of 2019, dated 09.09.2019 is set aside.

- (iii) The Criminal Application filed by the applicant before the learned Magistrate bearing No.352 of 2018 stands disposed of as premature.
- (iv) The applicant's right to approach the criminal Court after the necessary action taken by the Charity Commissioner is kept open.
- (v) Record and Proceedings be returned to the Judicial Magistrate, Bhusawal.

(S. G. MEHARE, J.)

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