IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL PUBLIC INTEREST LITIGATION NO. 05 OF 2022

Hindu Janjagruti Samiti
Registered Charitable Trust
Represented by :
Priyanka Avinash Lone,
age 36 years, Occ. Social Service,
R/o. 16, Shriniketan Colony, Aurangabad. ... **Petitioner**

VERSUS

1) The State of Maharashtra
Through Chief Secretary,
Mantralaya Mumbai-32.

2) The Additional Chief Secretary,
Home Department,
Mantralaya Mumbai.

3) The Director General of Police,
Maharashtra State, Mumbai.

4) Special Inspector General of Police
Aurangabad Range, Aurangabad.

5) The Superintendent of Police,
Dist. Osmanabad.

6) Shri. Tuljabhawani Mandir Trust Tuljapur,
Tq. Tuljapur, District Osmanabad. ... **Respondents**

...

Advocate for Petitioner : Mr. S.B. Deshpande, Senior Advocate, i/b Mr. S.M. Kulkarni.
Additional Public Prosecutor for Respondents/State : Mr. M.M. Nerlikar
Advocate for Respondent No. 6 : Mr. Sujeet Karlekar a/w Mr. L.C. Patil

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

RESERVED ON : 29.04.2024
PRONOUNCED ON : 09.05.2024

PER COURT : (PER : MANGESH S. PATIL, J.)

This is a Public Interest Litigation initiated by a public spirited charitable trust stated to be interested in upkeep and maintenance of the public revered temple of Goddess Tuljabhawani at Tuljapur visited by devotees from across Maharashtra, Karnataka, Andhra Pradesh, Telangana and Goa states.

2. Essentially, the allegations are about fraud and misappropriation happened in the management of the temple particularly in respect of offerings received by the deity from 1991 to 2009. It is seeking registration of crime and its investigation.

3. We have heard learned senior advocate Mr. Deshpande for the petitioner, learned Additional Public Prosecutor Mr. Nerlikar and Mr. Karlekar learned advocate for respondent no. 6-Trust.

4. There is no dispute about the fact that respondent no. 6 Shri. Tuljabhawani Temple Trust was registered with the office of the Assistant Charity Commissioner in the year 1962. There were no bye laws or rules and regulations for its management.

5. It is averred that by way of a resolution of 30.08.1984 the trustees had resolved to undertake auction of the donation box. By another resolution dated 01.09.1991 the practice was abandoned on the ground that it was not in the interest of the temple trust. It is alleged that without there being any reason or occasion this last decision not to auction the donation box was again reversed in few months and the practice of undertaking auction resumed and during this period from 1991 to 2009 there was rampant embezzlement in respect of the offerings to the deity. In spite of huge offerings of gold and silver ornaments through the donation box only

few were accounted for.

6. It is then averred that in the year 2009 the then Collector Osmanabad (Dharashiv) realised that such embezzlement was taking place. A similar conclusion was drawn even by the office of the learned Joint Charity Commissioner. The matter was taken to the State Government which entrusted the enquiry to the criminal investigation department. Since there was no further progress, the petitioner-Trust filed P.I.L. No. 96/2015 praying for speeding up the enquiry.

7. As per the order of this Court in P.I.L. No. 96/2015 an enquiry report was submitted to the Court in a sealed cover on 29.09.2017 and the petition was disposed of.

8. It is then alleged that after going through the enquiry report it was revealed that the enquiry report had recommended setting up of criminal law in motion. Still, the recommendations of the report were deliberately ignored. Hence this P.I.L. with following original and amended prayers :

> *"B) By appropriate writ, order or directions in like nature, respondents be directed to register First Information Report on the basis of the information of cognizable offence contained in the inquiry report and the covering letter.*
>
> *C) By appropriate writ, order or directions in like nature, respondents be directed to constitute a Special Investigation Team to investigate the said crime.*
>
> *C-I) By issuing a writ of certiorari or any other appropriate writ, order or direction in the like nature, the letter dated 04.08.2018 annexed at Exhibit-R-5, page 59, issued by Desk Officer and the letter dated 30.08.2018 at page 60 issued by Special Inspector General of Police (Law & Order) O/o Director General of Police may kindly be quashed.*
>
> *C-II) By issuing a writ of certiorari or any other*

appropriate writ, order or direction in the like nature, the order dated 02.02.2020 annexed at Exhibit R-6, page 61 issued by the Special Inspector General of Police (Law & Order) O/o Director General of Police and the report submitted by Additional Inspector General of Police, CID, dated 24.01.2020 and the report dated 23.01.2020 annexed from page Nos. 63 to 75 submitted by Superintendent of Police, CID, Aurangabad may kindly be quashed.

C-III) By issuing a writ of certiorari or any other appropriate writ, order or direction in the like nature, the respondent no. 1 & 2 may kindly be directed to order recovery of amount of Rs. 8 Crores from the persons who had embezzled the gold, silver ornaments and cash.

9. Initially, the Superintendent of Police CID, Aurangabad, filed an affidavit in reply. He stated about submission of the enquiry report pursuant to the directions of this Court in P.I.L. No. 96/2015. He submitted that a copy of the enquiry report was submitted to the Director General of Police, Maharashtra State, who directed reenquiry on 17.11.2017 (Exh. R3). Accordingly, as per this direction another enquiry was conducted and the report was forwarded to the Director General of Police on 21.02.2018 (Exh. R4). It was a detailed report containing the names of the trustees and the manner in which embezzlement had taken place suggesting registration of crime under different sections of the Indian Penal Code like 109, 406, 409, 420, 467, 468, 471, read with Section 34 of the Indian Penal Code and under Section 67 of the Maharashtra Public Trust Act, 1950. It was mentioned that during the period between 1991 and 2009 there was misappropriation to the tune of around Rs. 8.46 Crores. The report was forwarded to the Home Department of the State Government on 22.03.2018 and the Home Department again directed further reenquiry.

10. Further enquiry was accordingly conducted and a report was forwarded to the Director General of Police on 24.01.2020. After submission of all these reports dated 27.09.2017, 21.02.2018 and 24.01.2020

reiterating embezzlement, the Home Department by its communication dated 15.06.2022 addressed to the Director General of Police observed that though there were irregularities and negligence by the then trustees, those were the then Collectors, Sub Divisional Officers and Tahsildars who could not be held criminally liable and that period from 1991 to 2009 was pretty old, and communicated its decision not to conduct any departmental enquiry (Exh. R7) by the impugned report dated 24.01.2020 submitted by the Superintendent of Police CID, Aurangabad.

11. Pertinently, deviating from the earlier two reports submitted by the Additional D.I.G. CID Maharashtra State Pune *inter alia* observing that the allegations were in respect of auctioning of the donation box and expressly concluding about the concerned officers having indulged in misappropriation, the impugned enquiry report dated 24.01.2020 mentions that no concrete proofs could be collected in spite of reenquiry due to enormity of the matter. In absence of any record pertaining to the actual responsibilities it was merely an inference. This report mentions as to how the changes had occurred in respect of the Tahsildars who were ex officio managing trustees and stating that it would be a matter of negligence.

12. All such inferences drawn ultimately by the Home Department based on the impugned report submitted by the Superintendent of Police CID Aurangabad have been controverted on behalf of the petitioner by filing a rejoinder on 09.01.2023.

13. Additional Chief Secretary of the Home Department has also filed an additional affidavit. It is mentioned that in the earlier enquiries notional calculations were made. There was no concrete material and the prosecution could not stand simply on the basis of such notional calculations. Support is being sought to such stand on the basis of the order passed by the Delhi High Court on 23.11.2020 in Criminal Miscellaneous Application No. 13703/2020, 13851/2020 and 14091/2020. It is mentioned that there was

no intention to protect anybody but it was not practicable to register the crime and investigate it merely based on the inferences.

14. The same Secretary has filed additional affidavit on 13.07.2023 *inter ali*a mentioning that Collector Osmanabad, who is ex officio President of the respondent no. 6-Trust has submitted a report recommending certain administrative reforms, pursuant to the query put by the Law and Judiciary Department (Exh. A, page 108).

15. The learned advocate Mr. Deshpande would submit that the very fact that the then Collector in the year 2009 could sense embezzlement and even the Joint Charity Commissioner Latur in a proceeding bearing Application No. 3/2010 by the order dated 20.04.2010 noticed gross illegality and mismanagement taking serious objection to the auctions being undertaken in respect of donation box and the subsequent initial enquiry reports were unanimous to the extent of auctioning of the donation box which clearly revealing misappropriation and criminal breach of trust, should have been sufficient for the State Government to direct registration of crime and its investigation. The conduct in repeatedly directing reenquiries in itself was unwarranted and sufficient to infer that it was a deliberate attempt to overlook the conduct of all the trustees at the relevant time. It is a clear breach of the mandate of law laid down in the matter of **Lalita Kumari Vs. State of Uttar Pradesh; (2014) 2 SCC 1**. The fact that only because the government officials have been heading the management that, in all probability, the State Government has been trying to protect them.

16. The learned Additional Public Prosecutor would submit that there is no intention on the part of the Government to protect anybody. Though there could be some misappropriation and embezzlement, there is no concrete record. It was a matter of auctioning of the donation box undertaken every year. In the absence of any concrete proof, it is the stand of the Government that it would be an exercise in futility.

17. Learned advocate for the respondent no. 6- Temple Trust would submit that it cannot and does not have any objection for registration of crime and its investigation.

18. One need not overemphasize the importance of the mandate of law laid down in the matter of **Lalita Kumari (supra)** that governs the field.

19. As can be noticed, there are three enquiry reports. The latest report, which is impugned by adding a prayer, dated 24.01.2020 toes a bit of different note than the earlier two reports which clearly demonstrated the manner in which embezzlement had taken place. The impugned report also to some extent corroborates the inferences drawn in the earlier reports albeit proceeds to state that there is no concrete material and the period of alleged misappropriation being old one, registration of crime would not lead to conviction.

20. Bearing in mind the fact that it is a matter of offerings to the deity received in the donation box, when everyone, even the latest report impugned in the petition dated 24.01.2020 is unanimous that the practice of auctioning the donation box should not have been resorted to and even the Joint Charity Commissioner had directed the practice to be stopped by the order dated 20.04.2010, for the reasons recorded therein, in our considered view, the issue needs to be taken to the logical end, even if it requires registration of a crime.

21. We cannot countenance the stand being taken by the State Government prejudging the issue. If at all the crime is registered and investigated and if the investigating machinery/officer is unable to collect the material, obviously, he will not be in a position to substantiate the allegations and may not even file a charge-sheet. However, the action cannot be preempted.

22. We, therefore, are of the considered view that since it is a matter of

misappropriation and criminal breach of trust resorting to forgery, it being a cognizable offence punishable under relevant sections of the Indian Penal Code, the criminal law must be set in motion and there has to be a threadbare investigation into the allegations.

23. Admittedly, the practice of auctioning the donation box has been stopped after the Joint Charity Commissioner passed the order in Application No. 3/2010 dated 20.04.2010.

24. The Criminal Public Interest Litigation is disposed of with following directions :

(a) The enquiry report dated 27.09.2017 (Exh. R2) and another report dated 21.02.2018 (Exh. R4), shall be registered as F.I.R. with Tuljapur police station and shall be investigated by the officer of the rank of Superintendent of Police CID, Maharashtra State.

(b) The investigating officer to be appointed shall undertake the investigation immediately and shall conclude it as expeditiously as possible.

(SHAILESH P. BRAHME, J.) **(MANGESH S. PATIL, J.)**

mkd/-