



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.3011 OF 2022**

1. Syed Shafiq Ahmed Hashmi S/o Rashidoddin
Age: 64 years, Occu: Pensioner,
R/o: H. No.1-12-271, Juna Bazar, Beed,
Tq. and Dist. Beed.
2. Syed Iftekhhar Ahmed S/o Abdul Jabbar
Age: 64 years, Occu: Pensioner,
R/o: Behind V.I.P. Lawns, Telgaon Road, Beed,
Tq. and Dist. Beed.
3. Momin Abdul Zafar S/o Abdul Aziz
Age: 45 years, Occu: Service,
R/o: Near Aman Lawns, Kausar Nagar,
ZamZam Colony, Beed, Tq. and Dist. Beed. ..Applicants

Versus

1. The State of Maharashtra
Through Shivaji Nagar Police Station, Beed.
2. MirzashareqKhurshidBaig
Age:39yrs, Occu; Teacher
R/o AL-Huda Urdu Primary School,
VidyaNagar (East), Barshi Road, Beed. ..Respondents

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Mr. Sayyed Tauseef Yaseen, Advocate for the Applicants.

Mr. V. K. Kotecha, APP for Respondent No.1.

Mr. R. M. Shaikh, Advocate for Respondent No.2.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATED : 04th SEPTEMBER, 2024.

ORDER (Per: S. G. Chapalgaonkar, J.)

1. The applicants seeks to quash and set aside FIR as well as charge-sheet in Crime No.96/2022 registered with Shivajinagar City Police Station, Beed for offences punishable under Sections 406, 420, 467, 468, 477 and 34 of the Indian Penal Code.

2. The respondent no.2 lodged FIR alleging that Noor Educational Society has been registered under Bombay Public Trust Act. It runs Al-Huda Urdu Primary Secondary School. The constitution of Trust provides for election of Managing Committee of Trust for every three years. The change report after every election needs to be approved by Deputy Charity Commissioner. In September 2012, the election of Managing Committee was held. The applicant nos.1 and 2 were elected as President and Secretary. However, Application No.1240/2012 reporting change was rejected vide order dated 12.07.2013. Suppressing the fact of rejection of change report, applicant nos.1 and 2 continued to administer Trust with intention to draw financial benefits. They prepared false documents pretending themselves as Trustees in charge of administration and submitted Government authorities and Education Department of Zilla Parishad. They continued to administer the Trust depicting themselves as President and Secretary during the period from 2012 to 2019 without authority. Similarly, in connivance with the Headmaster of the school i.e. Mr. Momin Abdul Jafar-applicant no.3 they availed infrastructure grant of Rs.2,00,000/- during Financial Year 2014-15 from the Government. As such, they have committed the offences punishable under Sections 420, 406 and 34 of the Indian Penal Code. The investigation progressed in pursuance of the aforesaid crime and charge-sheet came to be filed in the Court of Judicial Magistrate First Class, Beed against the applicants for offences punishable under Sections 406, 420, 467, 468, 477 and 34 of the Indian Penal Code. The gist of the charge-sheet stipulates that subject crime took place during the period from 18.09.2012 to 15.09.2015. The applicant nos.1 and 2 falsely depicted themselves to be President and Secretary of the Trust during the period from 2012 to 2019, conducted business of the Trust, although they were

not authorized under law and collected donations worth Rs.5,24,30,941/-.

3. Mr. Sayyed, learned Advocate appearing for the applicants submits that applicants have been falsely implicated in the aforesaid crime. He would submit that allegations in the FIR are palpably false and bereft to constitute any offence. The respondent no.2 has lodged FIR in revengeful manner with ulterior motive for wreaking vengeance against applicants. He would submit that informant-Mirza Shareq Baig was given understanding and warning for his mis-behaviour and misconduct by the Headmaster. The respondent no.2 then raised assault against him. Consequently, Crime No.399/2015 has been registered for offence punishable under Section 307 of the Indian Penal Code. The Sessions Case No.25/2017 is now pending. The applicant nos.1 and 2 initiated disciplinary proceeding and proposal for suspension was forwarded to the Education Officer. Consequently, the present FIR has been lodged by the informant in revengeful manner. He would, therefore, urge to quash and set aside FIR, charge-sheet and consequential criminal proceedings pending against the applicants.

4. Mr. Kotecha, learned APP appearing for respondent no.1 as well as Mr. Shaikh, learned Advocate appearing for respondent no.2 vehemently opposes application. They would submit that contents of the FIR makes out ingredients of offences punishable under Sections 420, 406 r/w 34 of the Indian Penal Code. The documentary evidence in the charge-sheet shows that change report of elections of September 2012 was rejected in 2013 and since then, applicant nos.1 and 2 illegally conducted business of the Trust using stamps and letter heads. The grants and donations were received from the Government on the basis of such

communications. Apparently, offence of cheating and misappropriation has been made out.

5. We have considered submissions advanced by the learned Advocate appearing for the respective parties. The bone of the contentions in the FIR is that applicant nos.1 and 2 were never authorized as Trustees of the Noor Educational and Welfare Society. The change report in respect of election dated 23.09.2012 was rejected by the Deputy Charity Commissioner, Beed vide order dated 12.07.2013. Suppressing the said fact, applicant nos.1 and 2 continued to represent themselves as Trustees and continued to run business using seal and letter heads of the Trust till 2019. During this period, various grants have been received from the State Government on the basis of proposal moved by applicant nos.1 and 2 depicting themselves to be President and Secretary of the Trust.

6. Apparently respondent no.2 has already instituted a private complaint in Criminal Application No.429/2016 before the Chief Judicial Magistrate First Class, wherein similar allegations are made. The order issuing process in the said complaint has been quashed by this Court and matter is remitted back. The record also indicates that proposal dated 20.04.2014 supported by Resolution for grant of approval to the services of respondent no.2 under signatures of applicant nos.1 and 2 was moved to Education officer and same was approved. Further order dated 29.08.2019 passed by Deputy Charity Commissioner, Beed in Miscellaneous Application No.846/2019 shows that members office bearers / Executive Board who assumed office of Trust as per election of 2012 were declared as *de-facto* Executive Body from the period from 27.09.2012 till the next election. In view of aforesaid declaration

applicant nos.1 and 2 cannot be treated as unauthorized President and Secretary of the Trust. We have considered the contents of the FIR in light of aforesaid order passed by the Deputy Charity Commissioner. The Deputy Charity Commissioner has observed that change report no.1240/2012 was submitted on the basis of election dated 23.09.2012 for the period from 2012 to 2015. The said change report was rejected on 12.07.2013. The order dated 12.07.2013 was challenged before Joint Charity Commissioner, Latur under Section 70(A) of the Maharashtra Public Trust Act. However, said Revision Application came to be rejected on 03.01.2019. It is also observed that Executive Body of the Trust continued to function since 2012 to 2018 and they have accepted the responsibility of conduct of business of the Trust during the said period. Consequently, the said Executive Body is declared as *de-facto* Executive Body and they were directed to conduct further election within a period of sixty days. It appears that in pursuance of order dated 29.08.2019 the further elections were conducted. The applicant nos.1 and 2 are again elected as members of Executive Body. The order passed by the Deputy Charity Commissioner has attained finality.

7. Pertinently, the impugned FIR is lodged in the year 2022 for alleged offences during the period from 2012 to 2015. The respondent no.2 was well aware that applicant nos.1 and 2 are discharging function as President and Secretary of the Trust. Infact, in the year 2014 his own proposal for approval of appointment was routed through Executive Body presided over by applicant no.1 on recommendation of applicant no.2. The respondent no.2 has been benefited on the basis of proposal. Apparently, as long as he was receiving benefit, he had no objection to accept applicant nos.1 and 2 as President and Secretary of the

Trust. It is only when dispute erupted between respondent no.2 and applicants, he started filing various complaints/criminal proceedings against the applicants. At this stage, reference can be given to the guidelines laid down in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***¹, which are as under:

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of

¹ AIR 1992 SC 604.

which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. Applying aforesaid guidelines in the facts of the present case, it can be noted here that first part of the allegation that applicants were not authorized to conduct business of the Trust during the period from 2012 to 2015 and that they have illegally or unauthorizedly depicted themselves to be Trustees does not hold water in light of the declaration given by the Deputy Charity Commissioner, Beed vide order dated 29.08.2019 passed in Miscellaneous Application No.846/2019. The record further shows that respondent no.2 had also initiated proceeding under Section 41(B) of the Maharashtra Public Trust Act, 1950 against the applicants with similar allegations, as incorporated in the impugned FIR. The said application came to be rejected on 17.06.2022 with observations that there is no material to accept contentions of respondent no.2. In that view of the matter, first limb of allegation does not survive. Even after considering entire material in the charge-sheet, the ingredients of Sections 406, 420, 467, 468, 477 of the Indian Penal Code are not discernible. On the other hand, it can be observed that applicants have bonafidely conducted business of the Trust while change report was pending before the authorities under Maharashtra Public Trust Act.

Although respondent no.2 alleges that proposal for grant of Rs.2,00,000/- was moved by the applicants without authority, such allegation does not stand to scrutiny in view of aforesaid observations. *Prima facie*, there is nothing to controvert accounts certified by auditor. The amounts received towards grant in aid appears to be properly utilized against designated heads as per audited reports. There is nothing in charge-sheet to depict that applicants have misappropriated funds of trust in any manner or dishonestly used amount received towards grants to attract offense of breach of Trust, cheating etc.

9. The evidence on record suggests that respondent no.2 is using procedure for wreaking vengeance against applicants only after proposed action for misconduct of respondent no.2. The clause No. 7 of guidelines by Supreme court in case of **Ch. Bhajan Lal** (Supra) would squarely apply in this case. In that view of the matter, this Court finds that this is a fit case to exercise jurisdiction under Section 482 of the Criminal Procedure Code and quash and set aside the impugned FIR and further proceeding in Regular Criminal Case pending before the Judicial Magistrate First Class at Beed. Hence, following order:

ORDER

- a. Criminal Application is allowed.
- b. The FIR vide Crime No.96/2022 registered with Shivajinagar Police Station, Beed, charge-sheet filed in pursuant thereto and consequential criminal proceeding pending before Judicature Magistrate First Class, Beed is hereby quashed and set aside.
- c. Criminal Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE