



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

CRIMINAL WRIT PETITION NO. 475 OF 2025

Mohammad Amin Sayyad and Ors. .. Petitioners

VERSUS

The State of Maharashtra and Anr. .. Respondents

Mr. R.R. Deshpande h/f. Ms. Priyanka R. Deshpande, Advocate for the petitioners.

Ms. Chaitali Choudhari Kutti, APP for respondent No.1-State.

Mr. Saeed S.Shaikh, Advocate for respondent No.2.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 13.08.2025

PRONOUNCED ON : 08.09.2025

ORDER :-

01. Present petitioners have approached this Court taking exception to an order passed by the learned Additional Sessions Judge, Aurangabad dated 10.02.2025 passed in Cri. Revision Application No. 63 of 2022. The learned Sessions Judge by way of the impugned order has set aside the order passed by the learned Additional Chief Judicial Magistrate, Aurangabad in Cri. M.A. No. 1736 of 2021 and remanded back the matter to decide the same on merit. The learned Magistrate by his order rejected the application filed by the respondent seeking directions under section 156 (3) of the Cr.P.C.

02. The facts in short for the purpose of deciding this petition are that, the respondent No.2 claims to be a person having interest in Wakf having registration No. B-34 at Pune. It is alleged that the present respondents, though not having any concern with the said Wakf property, have dealt with the property of the Wakf, by disposing off the property by way of partition/development agreement etc. and used amount for their own use. There are proceedings pending about the Wakf proeprty. The allegation is that in 1997 the respondents got one Wakf property registered in their name bearing No. B-32 and accepted the amount of compensation towards property of the Wakf. Thereafter, the respondents have also given land of the Wakf on rent and are using the said rent amount for their own use, have not given any audit etc. to Wakf board and caused wrongful loss to the Wakf and to the Government. The respondents, thereafter, gave complaints to the police and police commissioner. However, no cognizance is taken.

03. The learned Magistrate considered the application. It is observed that the Wakf property is situated at Pune. In view of section 181 of the Cr.P.C. it is the Court at Pune, which has jurisdiction. He further considered provisions of Section 52-A of the Wakf Act, which

prohibits the Court from taking cognizance under section 52-A(3) of the Wakf Act of any offence except on a complaint made by the Board or any officer duly authorized by the State in that behalf, and rejected the application.

04. The respondent thereafter preferred Criminal Revision Application No. 63 of 2022. The learned Sessions Judge observed that though property is situated at Pune, office of the Wakf Board is at Aurangabad. The forged and fabricated documents are submitted in the office of Wakf Board at Aurangabad and it is therefore the Court at Aurangabad that has the jurisdiction. As regards section 52-A of the Wakf Act is concerned, it is observed that the said section came in the statute book on 01.11.2013. The allegations of the wrongful gain, wrongful loss and dealing with the property without authority are of period prior to 2013 and therefore the bar under section 52-A(3) shall not come into effect and the complaint can be filed even by a person other than a person authorized by the Board and allowed the revision.

05. Learned Advocate Dr. Deshpande for the petitioners vehemently argued that the learned Magistrate had rightly passed the order. There was no reason for the learned Sessions Court to quash and

set aside the well reasoned order. The learned Sessions Judge has committed an error of law while passing the order. The law prohibits taking cognizance of complaint, if not filed by the Wakf Board or a person duly authorized by the Government.

06. The learned Advocate for respondent No.2 Mr. Saeed vehemently argued that the office of the Wakf Board is situated at Aurangabad. The documents are submitted in the office of the Board. The control over the Wakf properties is with the Board and thus it is the Court at Aurangabad, which has jurisdiction. So far as taking cognizance, he submits that the learned Sessions Judge has rightly held that section 52-A has come on the statute book in the year 2013 and therefore it has no application where the allegation is for a period prior to 2013.

07. The learned APP supports the impugned order and prays for passing appropriate order.

08. After hearing all the parties, following questions arose for consideration of this Court:-

- i) Whether the learned Sessions Judge is right in holding that the Court at Aurangabad has jurisdiction?
- ii) Whether the bar under Section 52-A(3) shall come into play as the offences alleged are prior to 2013?
- iii) Whether the provision of Section 52-A has application in the present case?

09. In the present case the property is situated at Pune. There is no part of the property situated within the jurisdiction of the Court at Aurangabad. Application under section 156(3) of the Cr.P.C. is filed in the Court at Aurangabad on 05.08.2021. The offences alleged are right from 1997. There are no specific instances given except making vague allegations.

10. So far as first question about jurisdiction is concerned, this Court finds that in view of section 181(4) of the Cr.P.C., it is the Court where the property is situated or the offence has taken place has jurisdiction. Section 181(4) reads as under :-

“181. Place of trial in case of certain offences,

xxx

(4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was

received or retained, or was required to be returned or accounted for, by the accused person.”

. In the complaint, it is alleged that all the acts are done in Pune. It is only stated that office of the Wakf Board is at Aurangabad. The respondents had made complaint to the Wakf Board. This Court finds that, that itself will not give jurisdiction to the Court at Aurangabad. So far as section 52-A of the Wakf Act is concerned, it reads as under :-

52A. Penalty for alienation of waqf property without sanction of Board.—

- (1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years: Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefor.
- (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any offence punishable under this section shall be cognizable and non-bailable.
- (3) No court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.
- (4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.

11. The allegation is that the property of the Wakf is alienated.

No specific instances are given. Only one date is given of 31.05.1997, wherein another Wakf trust was registered by preparing forged documents and the seals of the said trust. The Wakf Board is registered on 30.12.2019. In view of section 52-A(3) of the Cr.P.C. the Court can take cognizance only on complaint made by the Board or any officer duly authorized by the State Government in this behalf. In the present case complaint is made in 2021. Section 52-A is brought on statute book on 01.11.2013. So, it is thereafter if complaint is to be filed, same to be filed in accordance with section 52-A of the Act. The learned Magistrate has rightly considered this aspect by considering the judgments stated before it. He has rightly relied upon judgment in **WP(C) No. 19775/2015W.P.(C) No.26480/2015 Puthukkodi Aboobacker Vs. The Sub Inspector of Police.** The learned Magistrate has rightly considered the provisions of Section 61 of the Wakf Act. Thus, this Court finds that the learned Sessions Court has committed mistake in passing the impugned order.

12. So far as point No.3 is concerned, if the complaint is seen, it falls in section 52-A of the Wakf Act and in that view the bar under section (3) clearly gets attracted. While considering this, one more aspect needs to be considered that for the offence under section 52-A of

the Cr.P.C. the punishment provided is of two years, in view of section 468 of the Cr.P.C. Therefore, no Court can take cognizance after three years from the date of alleged offence.

13. In view of the above discussion, the impugned order deserves to be quashed and set aside. Hence, this Criminal Writ Petition is allowed. The judgment and order dated 10.02.2025 passed in Criminal Revision Application No. 63 of 2022 by learned Additional Sessions Judge, Aurangabad is quashed and set aside.

[KISHORE C. SANT, J.]