



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8673 OF 2024

- 1) Prakash Rajmal Zavar,
Age : 70 years, Occu.Business,
- 2) Rajendra Shivilal Bhavsar,
Age : 56 years, Occu.Business,
Both R/o. Shenduri, Tq.Jamner,
Dist.Jalgaon.
- 3) Rajesh Govind Kasar,
Age: 56 years, Occu. Business,
R/o Shendurni, Tq. Jamner, Dist. Jalgaon.
- 4) Ramchandra Raghunath Hivale,
Age: 59 years, Occu. Business,
R/o Shendurni, Tq. Jamner, Dist. Jalgaon.

...PETITIONERS

Versus

- 1) Kaumudi Charudatta Sane,
Age: 54 years, Occu. Household,
R/o block No. 8, 2nd floor,
Aavantili, Happy Colony, Kothrud, Pune.
- 2) Kantilal Dhanraj Lalwani,
Age: 60 years, Occu. Business,
R/o Flat no. 1, Abhishek apartment, 15,
Suyog colony, Jalgaon.
- 3) Amrut Ananda Gujar,
Age: 80 years, Occu. Agri.,
R/o near Trivikram temple,
Shendurni, Tq. jammer,
Dist. Jalgaon.

- 4) Suhas Vasantrao Joshi,
Age: 70 years, Occu. Business,
R/o 14, Vrindavan bungalow, Part-2,
Thaltej Shilaj Road,
Thaltej, Ahmedabad, Gujrat.
- 5) Kalpak Charudatta Sane,
Age: 32 years, Occu. Education,
R/o block No. 8, 2nd floor, Aavantili,
Happy Colony, Kothrud, Pune.
- 6) Ankur Kantilal Lalwani,
Age: 31 years, Occu. Education,
R/o Flat no. 1, Abhishek apartment,
15, Suyog colony, Jalgaon.
- 7) Sau. Kalyani Abhay Kulkarni,
Age: 54 years, Occu. Household,
R/o block No. 8, 2nd floor, Aavantili,
Happy Colony, Kothrud, Pune.
- 8) Prashant Trivikram Kaundinya,
Age: 55 years, Occu. Service,
R/o Krishi udyog colony,
Bhadgaon road, Opposite
Suresh Baheti's Bungalow,
Pachora, Dist. Jalgaon.
- 9) Shirish Vishnu Barve,
Age: 63 years, Occu. Architect,
R/o opposite M. J. College,
Zilla Peth, Jalgaon.
- 10) Priyadarshan Amrit Gujar,
Age: 45 years, Occu. Business,
R/o Shendurni, Tq. Jamner,
Dist. Jalgaon.
- 11) Kailash Bhikan Shirapure,

Age: 48 years, Occu. Business,
R/o Shendurni, Tq. Jamner,
Dist. Jalgaon.

- 12) Satish Madhukar Sane,
Age: 73 years, Occu. Business,
R/o Shendurni, Tq. Jamner,
Dist. Jalgaon.

...RESPONDENTS

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Advocate for the Petitioners : Mr. Dixit Sushant V.
Advocate for Respondent Nos.1,2 and 4 to 9: Mr. Girish V. Wani

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CORAM : SHAILESH P BRAHME, J.

DATE : 25th FEBRUARY 2025

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith with the consent of the parties. Heard both sides finally at the admission stage.
2. Heard learned counsel Mr. Dixit for the petitioners and learned counsel Mr.Vani for contesting respondents .Other respondents are served but none appeared on their behalf.
3. This petition is directed against order dated 25.07.2024 passed below Exhibit-115 by learned Deputy Commissioner, Jalgaon in Change report No.1199 of 2012, rejecting the application of the petitioners filed under Section 340 of Cr.PC soliciting action against the respondent no.2 for giving false evidence and violating the order passed below Exhibit-106.

4. Respondent no.2 is the reporting trustee who has filed Change report No. 1199 of 2012. The petitioners and others are the objectors who are contesting the change report. It is informed that matter is at the stage of final arguments.

5. Petitioners had submitted application Exhibit-106 under Order 11 rule 14 of C.P.C. seeking production of the documents enumerated in paragraph no. 2 which were in the custody of the respondent no.2. It was partly allowed and the respondent no.2 was directed to produce the documents mentioned in paragraph no.2 (c) of the application vide order dated 06.04.2021. In pursuance of that order respondent no.2 submitted pursis at Exhibit-112 informing the commissioner that the document which was directed to be produced was misplaced from the record and he was unable to produce it.

6. In collateral proceedings bearing Change Report No. 1224 of 2012 the respondent No.2 was reporting trustee and he was a witness. In the cross-examination certain admissions were given by him on 07.03.2022 and 13.12.2022 pertaining to the possession of the record of the trust and the preservation of the record. In the wake of those admissions application Exhibit-115 was submitted by the petitioners under section 340 of Cr.P.C for taking action against the respondent no. 2 under Sections 174 and 193 of I.P.C. It was contended that pursis at Exhibit-112 filed by respondent no.2 is in defiance of order passed below Exhibit-106.It was a false pursis being filed to suppress material facts.

7. Learned counsel Mr. Dixit appearing for the petitioners submits that specific admissions were extracted from the respondent no. 2 in the collateral proceedings. Hence, the pursis is ex-facie false and misleading. He would submit that there is a candid admission of the respondent no.2 that no record was lost or destroyed and record was being preserved since 1997. Under these circumstances, pursis at Exhibit-112 would amount to giving false evidence and suppressing material facts. It is vehemently submitted that Deputy Charity Commissioner has power to take cognizance of the application of the petitioners submitted under Section 340 of Cr.PC and to conduct inquiry into the overt act of respondent no.2. The proceedings are being quasi-judicial in nature, Deputy Charity Commissioner vests with all necessary powers contemplated under Section 195 as well as 340 of Cr.PC. It is further submitted that the findings recorded in the impugned order are perverse and unsustainable.

8. *Per contra*, learned counsel Mr.Wani appearing for respondent no.2 would submit that Deputy Charity Commissioner is not a court either within the meaning of Section 2(4) of Maharashtra Public Trusts Act,1950(hereinafter referred to as 'Trust Act') as well as Cr.PC. He would rely on the judgment of co-ordinate bench in the matter of **Vitthoba Balaji Ghodke and Others vs. Balkrishna Ganesh Bhalerao and Others** reported in 1967 Mh.L.J.224 It is further submitted that pursis was filed on 27.12.2021 and cross-examination was conducted on 07.03.2022. There was no specific question asked and no specific admission extracted so as to infer culpability of the

respondent no.2. It is submitted that impugned order is reasonable and no interference is called for.

9. I have considered rival submissions of the parties.

10. It is apposite to reproduce the admissions extracted from the cross-examination of the respondent no.2 in a collateral proceedings upon which application Exhibit-115 is founded. Those are as follows :

.....हा सार्वजनिक न्यास स्थापन झाल्यापासूनचे या सार्वजनिक न्यासाचे संपूर्ण दप्तर माझ्याच ताब्यात आहे. हे म्हणणे खरे नाही की या सार्वजनिक न्यासाचे कार्यक्षेत्र हे शेंदुर्णी शहर पर्यंतच मर्यादित आहे.....

.....हे खरे की सन १९९७ ते आजपर्यंत संस्थेचे कोणतेही दप्तर गहाळ झालेले नाही किंवा जळालेले नाही. हे खरे की, सन १९९७ ते आजपर्यंतचे संस्थेचे दप्तर माझ्याकडे जतन करून ठेवले आहे.....

11. The respondent no.1 has filed Change report No.1199 of 2012 before Deputy Charity Commissioner, Jalgaon. By order dated 06.04.2021 below Exhibit-106, respondent no. 2 was directed to produce the documents mentioned in paragraph no.2 of the application Exhibit-106. For the present controversy, the resolution passed by Executive Committee accompanying proposal submitted in 2009 is relevant document. Respondent no. 2 submitted pursis stating that the documents which are directed to be produced were misplaced and unable to be produced. Against this pursis, the action is sought to be initiated against the respondent no.2 vide application Exhibit-115. Though application Exhibit-115 seeks action for offence

under Sections 173,174,193 and 120(b) of I.P.C, the parties are unanimous that section 174 has no application.

12. Chapter-XI of I.P.C, is about offences of false evidence and against public justice. Section 193 provides punishment for offence prescribed under Section 191, for giving false evidence. In case false evidence is given in the proceedings before the court then the procedure contemplated by section 195 read with section 340 of Cr.PC would be undertaken. Section 195 of Cr.PC is about the cognizance of the offences. The offences under Chapter-XI are covered by section 195(1)(b). For undertaking the procedure under section 340, it is imperative that concerned proceeding would be before court. Therefore, it is required to see as to whether Deputy Charity Commissioner can be regarded as Court.

13. The definition of the Court is provided by under Section 2(4) of Trust Act,1950 which is as follows :

(2) **Definition**

(3).....

[(4) "Court" means the High Court of Judicature at Bombay;];

. Deputy Charity Commissioner is not a Court under the said Act. The scheme of sections 195 and 340 of Cr.PC shows that the cognizance of the offences falling under chapter XXI would be taken by the Court and Court only. Section 195 (3) of Cr.PC also provides meaning of Court which is as follows :

195 (1)

(a) (i)..

- (ii)....
- (iii)....

- (b) (i)..
- (ii)....
- (iii)....

2.....

(3) In clause (b) of sub-section (1), the term “Court” means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

. Deputy Charity Commissioner is not covered by this sub-section also.

14. My attention is adverted by learned counsel Mr. Dixit for petitioners to sections 73 and 74A of the Trust Act, 1950 which are as follows :

73. Officers holding inquiries to have powers of civil court— In holding inquiries under this Act, the officer holding the same shall have the same powers as are vested in courts in respect of the following matters under the Code of Civil Procedure, 1908 (V of 1908) in trying a suit—

- (a) proof of facts by affidavits,
- (b) summoning and enforcing the attendance of any person and examining him on oath,
- (c) ordering discovery and inspection, and compelling the production of documents,]
- (d) issuing of commissions :

[Provided that, while holding enquiry under section 22 of the Act, the Assistant or Deputy Charity Commissioner shall record the evidence in the form of affidavits only subject to the cross-examinations of the deponent, if permitted by him in appropriate case].

74A. Charity Commissioner, Joint Charity Commissioner, Deputy or Assistant Charity Commissioner, etc., to be civil court within sections 345 and 346 the code Criminal Procedure, 1973— When the State Government so directs, the Charity Commissioner, Joint Charity Commissioner or Director of Accounts or any Deputy or Assistant Charity Commissioner shall be deemed to be a civil court within the meaning of sections 345 and 346 of the Code of Criminal Procedure, 1973]

15. The powers are conferred on the officers conducting enquiries under the Trust Act, 1950 by section 73. Those are the specific powers conferred to the limited extent. Deputy Charity Commissioner conducting enquiry under section 22 of the Act vests with those powers but it does not have the power under section 195 and section 340 of Cr.PC. In view of section 74 (A), Deputy Charity Commissioner is deemed to be Civil Court within meaning of Sections 345 and 346 of Cr.PC. Here also there is no specific mention of section 340 of Cr.PC. The powers under section 195 read with section 340 of Cr.PC cannot be read into provisions of sections 73 and 74 (A). Those are the powers to be conferred with specific statutory provisions. Therefore, I am not inclined to accept the submissions of the petitioners that Deputy Charity Commissioner is a Court and has the jurisdiction to take cognizance on application Exhibit-115.

16. Learned counsel Mr. Wani for respondents has relied on the judgment of **Vitthoba Balaji Ghodke** (supra). In that case Learned Single Judge was dealing with matter emanating from the decisions rendered in proceedings under section 19 of the Trusts Act, 1950. It was one of the arguments that Code of Civil Procedure was applicable to those proceedings in view of section 76 as it was then existed. Ultimately, it was held that authorities under Act are not Courts but Code of Civil Procedure is applicable. In that context following observations are made in paragraph No.3 :

(3)This argument fails to recognise the true meaning and effect of Section 76. Section 76 makes the Code applicable to all proceedings before the Court. To proceedings before the Court, which is defined as the District Court, the Code is applicable as such and there is no question of making it applicable as far as possible. Moreover, Section 76 is a provision only dealing with the procedure before the Court and there is no scope for any doubt that for the purposes of the Act the Court is only the one defined in Clause (4) of Section 2 of the Act. The learned Charity Commissioner has held that there are other Courts under the Act, namely, the Assistant Charity Commissioner, the Deputy Charity Commissioner and the Charity Commissioner, and if the Legislature wanted to make the Code applicable to the other Courts it would have expressly done so. With respect, it is an error to say that the Assistant Charity Commissioner or the Deputy Charity Commissioner or the Charity Commissioner, when they function in inquiries under the Act, are Courts. They are no doubt authorities constituted under the Act and have to perform functions of a quasi-judicial nature, but they are not Courts because Court is only the one defined in Clause (4) Of Section 2 of the Act, and since the Assistant Charity Commissioner or the Deputy Charity Commissioner or the Charity Commissioner is not included in the definition, they are certainly not Courts for the purposes of the Act. Section 76 does not provide for procedure for all enquiries under the Act but provides for procedure for proceedings before the Court and that provisions must, therefore, be construed as being made for that specific purpose. It is difficult to agree with the view of the Assistant Charity Commissioner and the learned Extra Assistant Judge that since Section 76 does not provide for the application of the Code of Civil Procedure to other Courts, the Legislature never intended to make the Code applicable to the other Courts. As against this, Section 19 of the Act itself provides that the procedure to be followed in enquiries under the Act must be in the prescribed by rules framed by the State Government under their rule-making power. That procedure happens to be the procedure applicable under the Provincial Small Cause Courts Act to Courts constituted under that Act. It is therefore the rules that one has to look to for finding out as to what procedure is applicable to enquiries under the Act and not to Section 76.

. For the limited purpose this judgment has a persuasive value. In the case at hand we are not examining the applicability of C.P.C. While finding out true purport of word 'Court', the above observations are relevant. Deputy Charity Commissioner is not court.

17. It is further strenuously pointed out by Mr.Wani that enquiries

under Trusts Act,1950 are judicial in nature but recourse to section 340 of Cr.PC can't be taken. Section 74 which is as follows :

74. Inquiries to be judicial inquiries— All inquiries and appeals under this Act shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code .

18. The proceedings under section 22 are judicial proceedings within meaning of sections 193,219,228 of I.P.C. The procedure contemplated under section 195 read with section 340 of Cr.PC can't be resorted to for taking action against respondent no.3 for offences under section 193. What is solicited by the petitioners is initiating action by taking recourse to section 340 of Cr.PC which is impermissible as Deputy Charity Commissioner, though is conducting judicial proceedings is not a Court and lacks the power of section 340 of Cr.PC.

19. The position of law is identical even if newly enacted provisions of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'B.N.S.S Act 2023') are considered. It came into effect from 01.07.2024. Provisions of Section 195 and Section 340 of Cr.PC are *pari materia* with Section 215 and Section 379 of B.N.S.S. Act,2023 respectively.

20. On merits also I find that there is a substance in the submission of Mr.Wani. Pursis was filed on 27.12.2021 and the cross-examination of his client was conducted on 07.03.2022 and 13.12.2022 respectively. There is no specific admission extracted from the cross-examination. Admissions on record do not pertain to

relevant resolution which was part of proposal submitted in 2009. I do not find any perversity in the findings recorded by the trial court. No case is made to cause any interference in the impugned order. Writ petition sans merit.

21. i)Writ Petition is dismissed.
- ii)However, there shall be no order as to costs.
- iii) Rule is discharged.

[SHAILESH P BRAHME, J.]

vsj..