



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3239 OF 2024

1. Gajanan Madhukar Mawal
Age 48 years, Occ.Service
R/o. Shivneri Apartment,
Ghati Road, Jalna,
Tq. And district Jalna
2. Gopal Jagannath Jadhav
Age 38 years, Occ. Service
R/o. Kharpudi Rod Vithoba
Residency, Near Sarswati Mandir
Jalna, District Jalna
3. Vinod Murlidhar Rathod
Age 34 years, Occ. MHADA Colony
Near Shivaji Maharaj Statue Jalna
District Jalna

...Applicants

Versus

1. The State of Maharashtra
Through Police Station Officer
Police Station Chandanzira
District Jalna
2. Shriram Sawairam Rathod
Age 63 years, Occupation Pensioner
R/o. Income Tax Colony
Jalna, District Jalna

...Respondents

.....
Mr. S.J. Salunke, advocate for the applicants
Mr. V.K. Kotecha, A.P.P. for the respondent No.1
Mr. A.D. Raut, Advocate for respondent No.2.
.....

**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.
DATED : 3rd JULY, 2025**

O R D E R (PER SANJAY A. DESHMUKH, J.) :-

1. Heard learned advocates for the respective parties.
2. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") for quashing the F.I.R. No. 332 of 2021 dated 21.10.2021 registered with Chandanzira police station, Jalna, District Jalna for the offences punishable under Section 406 r.w. 34 of the Indian Penal Code, 1860 (for short "the I.P.C.") and the consequential criminal case bearing R.C.C. No. 101 of 2022 pending before the learned Judicial Magistrate First Class, Jalna.
3. The informant averred in the report that he is agriculturist and is the President of Tuljadevi Shikshan Prasarak Mandal, Jalna which is running a residential school for handicapped students, in front of R.T.O. office, Nagewadi, Jalna. The said school is recognized as grant in aid and is being run since 2008. Applicant No.1 Gajanan Madhukar Mawal, is serving as in charge Head Master since 2010 whereas applicant Nos. 2 and 3 are serving as peon and watchman, respectively, in the said shool.
4. The informant further averred that LCD, TV set, computer, water filter, 50 blanket, sports items like carom board, Chess,

Laghor, Football, Volley-ball, calipers (artificial limbs) etc. as well as the official documents like cheque book, pass book, receipt book, dead stock register (immovable property register), donation register, T.C. book and other important documents and articles, which includes Rs.30,000/- were in the custody of applicant No.1 Gajanan. The informant was having faith on him, therefore, he did not pay careful attention, although the informant was regularly inquiring with applicant No.1 about it. The informant further averred that on 10.10.2021, when he questioned applicant No.1 about those articles, he gave evasive answers. He inspected the documents as well as articles and upon noticing that those are not available in the office, he asked applicant No.1 as to where those articles were, applicant no. 1 said that he will give those articles. However, he avoided to give those articles for many days. Upon enquiry with Applicant nos. 2 and 3, they both too gave evasive answers. Therefore, the informant gave a written letter to applicant No.1 on 11.10.2021 but he did not give back those articles of the school. He did not reply to the said letter also. The informant lastly averred that the applicants committed criminal breach of trust. Therefore, he lodged the report against the applicants on 21.10.2021.

5. Learned advocate for the applicants submitted that the applicants were not entrusted with the property, or that they did not

act with dishonest intention. The alleged breach was a result of a misunderstanding on the part of the informant and not a deliberate act of misappropriation of the applicants. The report and charge sheet do not provide sufficient evidence to prove the elements of the crime in question beyond a reasonable doubt. The applicants were never entrusted with the property in question, meaning, they never had possession or control over it under a specific agreement or obligation. Learned advocate for the applicants pointed out that the informant has filed false report to avoid his liability to pay salary of the applicants. The applicants only had custody of the property, not the full dominion or control needed to dispose it off or misappropriate it. Furthermore, the allegations are made only because the applicants failed to comply with the illegal demand of the informant and dared to take the legal recourse against him vide an F.I.R. No. 0517 of 2020 dated 03/11/2020 under section 7 of Prevention of Corruption Act. The learned advocate further submitted that the issue is of civil nature and thus the F.I.R. needs to be quashed and set aside.

6. Learned A.P.P. for respondent No.1 State submitted that applicants were entrusted with property, had dominion over it, and then dishonestly misappropriated and articles and converted the same to their own use, or disposed of that property in violation of the law or a legal contract. Thus, it appears that the act of the applicants

appears to be not merely negligent but also dishonest. The applicants were entrusted with the property in question, meaning it was delivered to them with the expectation that they would hold it in trust for the owner or another party.

7. Learned advocate for respondent No.2 informant submitted that the accused dishonestly used or disposed of the entrusted property for their own benefit, rather than for the purpose it was intended. This could involve selling the property, using it for personal gain, or refusing to return it which demonstrates that the actions of applicants were not a simple breach of trust or a mistake, but rather a deliberate act of dishonesty with the intention to deprive the informant of their property. Evidence of false promises, attempts to conceal the misappropriation, or prior fraudulent conduct can be used to establish this intent. Section 409 of the Indian Penal Code specifically addresses criminal breach of trust by public servants, who was duty-bound to account for the property and committed a breach of trust.

8. We have perused the charge sheet particularly, the report and the statements of witnesses. It appears that the articles which are alleged to be taken away by the applicants are not seized by the investigating officer during the course of investigation. It further appears that the F.I.R. in question is a counter blast to the F.I.R.

lodged by one of the applicants under the provisions of Prevention of Corruption Act, 1988. The essential ingredients of criminal breach of trust under Section 406 of the I.P.C. are not establishing either from the report or the statements of witnesses. Prima facie, it transpires that the informant has filed false report to avoid his liability to pay salary of the applicants. Therefore, on such vague and baseless allegations, compelling the applicants to face the trial, would be an abuse of process of the court. The case is made out for exercise of powers under section 482 of the Cr.P.C. We are therefore, inclined to allow the application, in the interest of justice, to prevent the abuse of process of the Court. Hence, the following order:-

O R D E R

- I. The application stands allowed.
- II. The F.I.R. No. 332 of 2021 dated 21.10.2021 registered with Chandanzira police station, Jalna, District Jalna for the offences punishable under Section 406 r.w. 34 of the Indian Penal Code, 1860 (for short "the I.P.C.") and the consequential criminal case bearing R.C.C. No. 101 of 2022 pending before the learned Judicial Magistrate First Class, Jalna, is quashed as against the present applicants.

(SANJAY A. DESHMUKH, J.) (SMT. VIBHA KANKANWADI, J.)

[PER SMT. VIBHA KANKANWADI, J.] :

1. I have gone through the order authored by learned Justice Sanjay A. Deshmukh. I agree to the operative part of the order, however, I want to add elaborate reasoning and therefore, present part of the order is added.

2. The informant says that the articles which have been allegedly belonging to the trust i.e. gifted to the trust or the school were taken away by the applicants but he has not annexed bills or entry in the register. Further when those articles would have been given as donation to the school then there ought to have been a resolution of the trust, but nothing has been produced before the investigating authority. Therefore, except his bare oral statement, there is nothing that the articles were entrusted to the applicants. The investigating officer has not even recorded the statements of those persons who had donated those articles and had not collected copy of the receipts regarding the purchases of those articles by the donors and therefore, there is no question of attracting the ingredients of offence under Section 406 of the Indian Penal Code and therefore, we say that this is a fit case to exercise the inherent powers. Thus, here I agree to the operative part of the order, above.

**[SMT. VIBHA KANKANWADI]
JUDGE**