



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

CRIMINAL APPLICATION NO.3982 OF 2022

- 1) Birjusingh S/o Bhikamsingh Gaherwar (Thakur),
Age-35 years, Occu:Business,
R/o-Ganesh Galli, Gadipura, Nanded,
Taluka and District-Nanded,
- 2) Bhimsingh S/o Hanumansingh Kaushik (Thakur),
Age-54 years, Occu:Business,
R/o-Beside of Habib Talkies,
Gadipura, Nanded,
Taluka and District-Nanded,
- 3) Badrisingh S/o Dagdusingh Kathi (Thakur),
Age-52 years, Occu:Business,
R/o-Ganesh Galli, Gadipura, Nanded,
Taluka and District-Nanded,

...APPLICANTS

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Itwara Police Station, Nanded,
Taluka and District-Nanded,
- 2) Ganeshsingh S/o Hanumansingh Thakur,
Age-49 years, Occu:Business,
R/o-Chirag Galli, Itwara, Nanded,
Taluka and District-Nanded,

...RESPONDENTS

...
Mr. Gajanan G. Kadam Advocate for Applicants.
Mr. A.R. Kale, Additional P.P. for Respondent No.1 -State.
Mr. S.N. Janakwade Advocate for Respondent No.2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATE OF RESERVING ORDER : 17th JUNE 2025

DATE OF PRONOUNCING ORDER : 23rd JULY 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed for quashing the proceedings in R.C.C. No.1056 of 2021 pending before the learned Judicial Magistrate First Class, Nanded, arising out of the First Information Report (for short "the FIR") vide Crime No. 337 of 2020 registered with Itwara Police Station, Nanded on 24th October 2020, for the offence punishable under Sections 405, 198, 199, 200, 420, 464, 468, 471 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Kadam for the applicants, learned Additional P.P. Mr. Kale for respondent No.1 and learned Advocate Mr. Janakwade for respondent No.2.

3. Learned Advocate appearing for the applicants submits that the applicants are the members of the trust by name,

"Shree Kshatriya Samaj Renuka Mata Mandir, Gadhipura, Nanded". It is a registered trust. Respondent No.2 filed Other Miscellaneous Criminal Application No.2279 of 2020, before the learned Judicial Magistrate First Class, Nanded against the applicants for the action to be taken under Section 156(3) of the Code of Criminal Procedure stating that the applicants have committed offence under Sections 405, 408, 409, 198, 199, 200, 420, 464, 468, 471 read with Section 34 of the Indian Penal Code. The said application came to be allowed by order dated 21st October 2020, by the learned Judicial Magistrate First Class, (Court No.3), Nanded. Thereupon the FIR was registered. If we consider the Original Miscellaneous Application and the FIR, there is total suppression of order that was passed a year prior to the institution of the Miscellaneous Application. It has been contended that the present applicants were the office bearers of the trust and they have created false bills, documents and then cheated the trust and misappropriated the said amount. While passing the order, the learned Magistrate has not considered that previous sanction of the Assistant Charity Commissioner has not been taken. In fact complainant himself had resorted to Section 38 of the Bombay Public Trust Act for special audit. In fact on 9th November 2021, the change report was rejected. The Joint

Charity Commissioner had dismissed the appeal and the private complaint is based on re-audit. The informant had no authority to lodge the report. Though he says that he was the elected secretary but the said change report has been then rejected. Under such circumstance, it would be unjust to ask the applicants to face the trial.

4. Learned Advocate appearing for the applicants relies on the decision in *C. Subbiah and others vs. the Superintendent of Police and others, AIR 2024 SC 2633*, wherein it is held that, it was clear that the complainant in spite of having made investments in the land deals which were evidently benami transactions, could not have instituted any civil proceedings for recovery against the persons in whose name the properties were held which would be the accused appellants. Since by virtue of the provisions contained in Sections 44(1) and 4(2) of the Benami Act, the complainant was prohibited from suing the accused for a civil wrong, in relations to these benami transactions as a corollary, allowing criminal prosecution of the accused in relation to the self-same cause of action would be impermissible in law. Here, in the present case also no such action would lie when the informant is no longer the secretary.

Learned Advocate for the applicants further relies on the decision in *Sarabjit Kaur vs. the State of Punjab and others, (2023) 5 SCC 360*, wherein it is held that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.

5. Learned Advocate for the applicants submits that it has been alleged in the FIR that the trust authorities during the period 2013 to 2018 had not kept the proper accounts. Further, 12 tenants had given the amount of Rs.18,12,000/- apart from the rent but the members of the trust issued the receipts for the amount of Rs.51,000/- only and for rest of the amount i.e. Rs.17,61,000/- no note was taken in the accounts of the trust. A different account was also opened without the permission through general body meeting etc., are the contents. However, all those documents were subject of the audit. Demand for special audit was made by the complainant/informant himself but then he proceeded on the basis of re-audit. Re-audit cannot be permitted unless it is through the orders of the Charity Commissioner. Learned Advocate for the applicants further relies

on the decision in *Narayan Kalba Gaikwad and others vs. the State of Maharashtra and others*, 2019 ALL MR (Cri) 3195, decided by the Division Bench of this Court, to which one of the Member of this Division Bench, i.e. SMT. VIBHA KANKANWADI, J. was party, wherein after relying on the decision in *Rajeshwarrao s/o Vishwanathrao Patil and others vs. the State of Maharashtra and others (Criminal Writ Petition No.507 of 2013, decided on 22nd August 2013)*, it was held that, when the Assistant Charity Commissioner is vested with the powers of the Civil Court then a private person cannot institute any FIR. Learned Advocate, therefore, prayed for quashing and setting aside the FIR and the charge-sheet.

6. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 strongly opposed the application. It is submitted that the learned Magistrate while passing the order under Section 156(3) of the Code of Criminal Procedure, has considered that since there was misuse of the powers and creation of false and fabricated bills and documents, the committee that came into power, decided to reinspect the audit report i.e. re-audit the same and thereupon those facts emerged. In fact the change report and copy of Schedule-1

showed that the applicants and other members were appointed as trustees and a note was taken that there was fulfillment of the requirement of Section 22 of the Bombay Public Trust Act. After finding that there was prima facie commission of cognizable offence, the order of investigation under Section 156(3) of the Code of Criminal Procedure was passed. The statements of witnesses have been taken including the tenants, who had stated that they had given huge amount to the then committee but proper receipts were not issued. Therefore, certainly, the offences have been made out prima facie and there is evidence to that effect.

7. Learned Advocate for respondent No.2 relies on the decision in ***Suresh Bhagwanrao Puri vs. State of Maharashtra, 2017 All M.R. (Cri.) 465***, wherein it is held that the applicants-trustees sold property of trust by posing that property is self acquired property. false documents created by applicants for showing that property is self acquired, though it was of trust. Sufficient documentary evidence was on record showing that land was purchased on behalf of trust. Merely because civil remedy may also be available to complainant, that by itself cannot be a ground to quash criminal proceedings. Learned

Advocate for respondent No.2 further relies on the decision in *Nara Chandrababu Naidu S/o Kharjura Naidu vs. State of Maharashtra, 2024 All M.R. (Cri.) 2118*, wherein it is held that action by two authorities is maintainable.

8. Here it is to be noted that there are much disputed facts in the matter. First of all, as per the FIR, the complainant - informant is the secretary, who along with the other committee members took charge of the trust on 19th September 2018. Along with the complaint application he had filed change report and copy of Schedule-1. So prima facie, he showed that he had the authority to lodge the report. The facts were taken into consideration regarding the embezzlement worth Rs.47,09,575/- and then investigation was ordered. During the course of the investigation, the other documents have also been collected including the trust documents. It is then stated by the applicants that complainant had resorted to Section 38 of the Bombay Public Trust Act for special audit but the ultimate order, even as on the date on which the submissions were heard, was not produced. The said application cannot be kept pending for years together. But it appears that the re-audit was got done and on the basis of the same the complaint application was filed.

9. We are not of the opinion that previous sanction of the Assistant Charity Commissioner is must for lodging the criminal report. It appears that the learned Advocate for the applicants got confused regarding the decision of this Court in ***Narayan Kalba Gaikwad and others vs. the State of Maharashtra and others***, (supra). It was observed in ***Rajeshwarrao s/o Vishwanathrao Patil and others vs. the State of Maharashtra and others***, (supra), that, the Assistant Charity Commissioner is an authority constituted under the Bombay Public Trust Act, and is vested with the powers, duties and functions under said Act, the Assistant Charity Commissioner is vested with powers of civil court, therefore, if any offence is committed by the accused in the process of any investigation or enquiry, it is an independent matter to be dealt with by the competent authority under the Bombay Public Trust Act under the provisions of Chapter XIV read with Chapter XXIV of the Code of Criminal Procedure. In ***Narayan Kalba Gaikwad and others vs. the State of Maharashtra and others***, (supra), the Assistant Charity Commissioner had rejected the application Exhibit 23 in order to initiate action as per Section 51 of the Bombay Public Trust Act and the said order appears to have not been challenged by the informant and

taking into consideration this factual scenario, this Court had come to the conclusion that the FIR therein was not maintainable or it was thought to be a fit case where the powers under Section 482 of the Code of Criminal Procedure could be exercised. But here there are no such events those have taken place. Only asking for the special audit under Section 38 of the Bombay Public Trust Act is different from seeking criminal prosecution under Section 51 of the said Act.

10. Now the contents of the charge-sheet would show that the statements of various tenants have been recorded who say that they had given huge amount to the committee members of the trust, however, neither proper receipts were given nor any document was given regarding the same and whatever receipt was given, was of a very less amount. Supporting further is the re-audit document. The criminal law can be set in motion by anybody and therefore, we do not find that there is any illegality in the order passed by the learned Magistrate in sending the matter for investigation under Section 156(3) of the Code of Criminal Procedure.

11. There is prima facie evidence against the applicants and

therefore, we do not find this to be a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure.

12. The Application stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JULY25