IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 756 OF 2020 WITH
CRIMINAL APPLICATION NO. 1724 OF 2020

Syed Shah Anwarullah Hussaini
s/o Syed Shah Noorullah Hussaini
& another .. Petitioners

versus

The State of Maharashtra
& another .. Respondents

Mr. R. S. Deshmukh, Senior Counsel along with Mr. U. S. Hashmi, Advocate, instructed by Mr. Taher Ali Quadri, Advocate for the Petitioners.
Mr. N. R. Dayama, APP for the State.
Mr. N. E. Deshmukh, Advocate for Respondent No. 2.
Mr. G. R. Syed, Advocate for Applicant in Criminal Application No. 1724 of 2020.

CORAM : R. M. JOSHI, J.
RESERVED ON : 26th OCTOBER, 2026.
PRONOUNCED ON : 29th OCTOBER, 2026.

ORDER :

1. This petition filed under Section 482 of Code of Criminal Procedure r/w Articles 226 and 227 of Constitution of India takes exception to the First Information Report bearing no. 79/2019 registered with Kandhar Police Station, Tq. Kandhar, District Nanded, for the offences punishable under Sections 409, 420, 447, 468, 471, 120-B r/w 34 of Indian Penal Code, Section 52A of Wakf Act,1995

(for short 'the Act') and charge-sheet filed in pursuance to the investigation carried out therein. Similarly, it further takes exception to the order dated 26.03.2021 passed by Judicial Magistrate First Class, Kandhar, taking cognizance of the said proceeding and issuance of summons against the Petitioners.

2. The facts which led to filing of the present petition can be narrated in brief as under :-

Petitioner No. 1 is the Mutawali of Kabrastan Dargah Hazrat Khadak Shah Bedhadak Saheb, a Wakf under the Act. Petitioner No. 2 is the son of Petitioner No. 1, who held general power of attorney of Petitioner No. 1. It is the case of the Petitioner that the Petitioners are looking after the management of three dargahs and protecting the wakf property. In this regard, several suits were filed against the encroachers. According to the Petitioners, the Wakf property is situated at outskirts of Kandhar city and it was prone to encroachment. When the Wakf Board instructed/directed Petitioner No. 1 to ensure that encroachment is not done on the said land, Petitioner No. 1, therefore, decided to construct some temporary tin shed on the border side of the land bearing Survey No. 1 situated at Kandhar, District Nanded which, he claims to be the land which is

abutting the road so that it will be easy for the Petitioner to keep watch on the encroachers and the same would ensure that there is no encroachment on the land. Accordingly, 21 temporary tin sheds/shops were erected. The shops were given on leave and licence basis. The Petitioners claim that there is no alienation of the Wakf land by them.

3. According to Petitioners, Respondent No. 2 - the Deputy Chief Executive Officer of Wakf Board filed private complaint before the Judicial Magistrate First Class, Kandhar bearing Other Misc. Criminal Application No. 14/2019 against the Petitioners contending that the Petitioners have violated the provisions of Wakf Act and constructed temporary tin sheds without sanction of Wakf Board and by letting the same on lease, extracted huge amount. Pursuant to the said complaint, by order dated 28.03.2019, the learned Judicial Magistrate First Class, directed investigation therein. Accordingly, on registration of crime bearing No. 79/2019, investigation was carried out which culminated into filing of charge-sheet against the Petitioners. In the due course, the learned Trial Court took cognizance of the proceeding and issued summons against the Petitioners. Hence, this petition.

4. Learned Senior Counsel appearing on behalf of the Petitioners submitted that the learned Magistrate ought not to have taken cognizance of the complaint made against the Petitioners for the reason that apparently there was no violation of provisions of Wakf Act nor any offence under penal code is attracted against them. He took exception to the said complaint on the ground that without any authority from the Wakf Board, such complaint came to be lodged and entertained by the Magistrate. On merits, it is his submission that admittedly, Petitioner No. 1 is the Manager of the Wakf and Petitioner No. 2 is the constituted attorney of Petitioner No. 1. He drew attention of the Court of the provisions of Section 3(i) of Wakf Act which, according to him, indicates that Petitioner No. 1 as well as Petitioner No. 2 are deemed to be Mutawali of the Wakf property and no doubt public servant in view of provisions of Section 101 of the Act. It is his submission that in the capacity of Mutawali, undisputedly, Petitioners are in possession of the land in question belonging to the Wakf and as such, the issue with regard to the said property being coming into possession of the Petitioners contrary to the provisions of Wakf Act, does not arise. He drew attention of the Court to the provisions of Sections 51 and 52A of the Wakf Act contending that by no stretch of imagination any offence can be said

to have been committed by the Petitioners. According to him, no malafides can be attributed against the Petitioners for construction of tin shed as the same was intended to protect the Wakf property. By referring to sketch of property, he argued that the construction was not on actual graveyard but on the area beyond road which divides the entire plot of land. In so far as the allegation with regard to erection of shops in the property and giving lease and licence is concerned, according to him, what is prohibited under the Wakf Act is lease and not licence. In order to distinguish licence from lease, he drew attention of the Court to Section 52 of the Easement Act. According to him, while dealing with the criminal proceeding, it may not be open for the Court to consider the licence as lease which may be permitted to be considered in a civil proceeding depending upon the facts and circumstances of the case. It is his submission that admittedly, no right was created in favour of the licensees and further in view of the compliance report (page No. 365) the sheds are removed. It is his submission that none of the licensees raised any issue with regard to their right in the said tin sheds and hence the facts of the case indicate it to be a licence and not lease as sought to be alleged. He drew attention of the Court to the observations made by this Court while granting anticipatory bail to the Petitioners. He

made reference to observations made therein that the Petitioners herein have tried on their own to protect the Wakf property and there is no connecting evidence against the Petitioners so far as the allegations about their misdeeds in respect of the said Wakf property are concerned. He thereafter took this Court to the provisions of the Act in order to canvas that there is no violation of any of the provisions of the Act and as such, no offence under Section 51 or 52A of the Act is made out against the Petitioners. According to him, for want of essential ingredients to constitute offence under Indian Penal Code, this is a fit case for quashment of the proceeding. He further submits that there is no allegation against the Petitioners that they mis-appropriated any fund received from the licence issued in respect of the said shops. He claims that as per the provisions of the Act, Petitioners were required to pay 7% of the income to the Wakf Board which they have paid and rest of the amount is invested/utilised for maintenance of the Wakf property. He places reliance on following judgments :-

(i) CBI vs. Indra Bhushan Singh
(2014) 12 SCC 100
(ii) Ashok Bampto Pagui vs. Agencia Real Canacona Pvt. Ltd.
2007(6) Mh.L.J. 94
(iii) Puthukkodi Aboobacker vs. The Sub Inspector
2016 AIR Ker 96
(iv) Saroj Goyal v. State
2008 (1) M.W.N. (Cr.) 236

(v) M.A. Aziz vs. A.P. State Wakf Board and another
1998 AIR (AP) 61
(vi) Deelip & another vs. Maharashtra State Board of Wakfs, Aurangabad
2014(4) Bom.C.R. 451
(vii) M.P. Wakf Board vs. Subhan Shah
2006 (10) SCC 696
(viii) Priyanka Srivastava and another vs. State of U.P. & others
2015(6) SCC 287
(ix) Rajiv Thapar vs. Madan Lal Kapoor
2013(3) SCC 30
(x) M/s Indian Oil Corporation vs. M/s NEPC India Ltd. & others
2006(6) SCC 736
(xi) Joseph Salvaraj A. vs. State of Gujrat and others
2011(7) SCC 59.

5. Learned APP, learned Counsel for Wakf Board and learned Counsel for informant opposed the petition. According to learned Counsel for Wakf Board, admittedly the property is Wakf property and though there is no dispute made with regard to the fact that Petitioner No. 1 is maintaining the property, he submits that there are disputes with regard to the *locus standi* of Petitioner No. 1 to be Mutawali. He, however, concedes to the fact that as of now, Petitioner No. 1 since managing the affairs of the Wakf property, he could be considered as Mutawali. It is his submission by referring to the provisions of Section 51 of the Act, more particularly proviso thereof that the lease of any kind in respect of a graveyard is prohibited. According to him, there is no dispute about the fact that the property

in question as a whole is a graveyard and as such, neither morally nor legally it was open to the Petitioners to carry out any construction thereon, much less commercial shops. According to him, the Petitioners cannot be permitted to say that for the purpose of preventing encroachment on the property, construction is carried out contrary to the law. According to him, this evidence is sufficient to proceed against the Petitioners before the Criminal Court. It is his further submission that the Mutawali is entrusted with the property and that he committed breach of trust by carrying out construction thereof and earning income from the same. He places reliance on observations of the Hon'ble Supreme Court in paragraph No. 27 of the judgment in case of Associated Hotels of Indian Limited vs. R. N. Kapoor, **1959 DGLS(SC) 122**.

6. Learned Counsel for intervenor submits that the term 'Lease' has not been defined in the Wakf Act and hence it would be appropriate to take into consideration definition of 'Lease' as provided under Transfer of Property Act. He drew attention of the Court to Section 105 thereof. Relying upon the said definition, it is his submission that the alleged leave and licence is just a nomenclature and infact it is lease which is prohibited under the provisions of Wakf

Act. According to him, what is relevant to take into consideration is the *mens rea* of the Petitioners which is apparent from record rather than clever drafting done of agreements by Petitioner No. 2 who himself is an Advocate. It is submitted that the spot panchanama more than sufficiently demonstrates that there are 21 shops constructed in the graveyard which is wholly unacceptable. According to him, the conduct of Petitioners also dis-entitles them to seek any relief.

7. At the outset, it needs to be recorded that irrespective of the fact that there are certain disputes with regard to the *locus standi* of Petitioner No. 1 to act as a Mutawali, admittedly, he is maintaining the Wakf property and as such, in view of provisions of Section 3(i) of Wakf act, he is treated/accepted to be Mutawali of the Wakf. As far as Petitioner No. 2 is concerned, he is the constituted attorney of Petitioner No. 1 and in view of definition of 'Mutawali', the person appointed by a Mutawali to perform the duties of Mutawali is also a Mutawali. Petitioner No. 2, therefore, needs to be considered as the Mutawali.

8. Once it is accepted that the Petitioners are Mutawali, needless to say that the Wakf property is in possession of the Petitioners, there is no question of Petitioners having purchased or taken possession of Wakf property either permanently or temporarily without prior sanction of the Wakf Board. It would be fruitful to take note of the relevant provisions of Section 51 and 52A of the Act which read thus :-

> 51. **Alienation of waqf property without sanction of Board to be void.—**
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> (1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board:
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> Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013).
>
> (1A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void ab initio:Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution

containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 (1 of 1894) or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:

Provided also that—

(a)the acquisition shall not be in contravention of the Places of Public Worship (Special Provisions) Act, 1991 (42 of 1991);

(b)the purpose for which the land is being acquired shall be undisputedly for a public purpose;

(c)no alternative land is available which shall be considered as more or less suitable for that purpose; and

(d)to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium in lieu of the acquired property.

A bare perusal of the above provision indicates that alienation of Wakf property is void if it sans sanction of Wakf Board. The alienation is indicated to be lease, sale, gift, mortgage, transfer of Wakf property. This Court, thus, is required to ascertain whether on

the basis of material on record, there is alienation of Wakf property by Petitioners.

> **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:
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> 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.
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> (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.
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> (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.

9. Now, question arises as to whether the present case is one wherein there is any material to show that the Petitioners in the capacity of Mutawali alienated Wakf property without prior sanction of the Board and offence punishable under Section 52A of the act is made out against them. As observed above, the petitioners being Mutawalli of Wakf cannot be said to have purchased the Wakf property or taken possession thereof without prior sanction of the Board. The said part of Section 52A(1) therefore has no application to the instant case.

10. The allegation against the Petitioners is that they constructed 21 tin sheds in the Wakf property which is a graveyard. There is further allegation that these tin sheds are used as shops by giving on leave and licence basis to number of persons and from whom income is received by the Petitioners. In this regard, the evidence collected during the course of investigation which forms part of the charge-sheet shows the said documents to be leave and licence agreements executed by Petitioners in favour of concerned persons.

11. On one hand Petitioners claim the agreement to be licence and not lease. Whereas on the other hand, it is the contention of learned Counsel for the informant and learned Counsel for Wakf Board that the alienation of property without prior sanction of the Board is void. The proviso to Section 51, according to them, states that no lease is permitted in respect of a mosque, dargah, graveyard except any unused graveyard in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013.

12. There cannot be dispute made with the preposition of law that the penal laws are to be interpreted strictly and must be read literally. It would not be open for the Court to expand scope of any provision which constitute an offence and consequently becomes liable for penal action. Needless to emphasize that an act unless clearly and without any doubt falls within the ambit of the statutory provision, is not an offence. Similarly the rule of benefit of doubt also must tilt in favour of the accused. Finally, it is not open to the Court to rewrite the penal provisions. Keeping in mind these well recognised

principles of the law, the material on record is appreciated in the context of the relevant provisions.

13. This Court, therefore, is required to see as to whether the material on record/documents and appending circumstances indicate the transaction in respect of tin sheds to be 'lease' or 'licence'. Since reference is made by rival parties to the provisions of Easement Act and Transfer of Property act, the reproduction of the said provisions becomes relevant.

Section 52 of Easement Act.

52. License defined

.Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license.

This provision indicates that in case of a licence no right or interest is created in the property but right would remain only to the extent it is specifically granted.

Section 105 of Transfer of Property Act

105. Lease defined.—

> A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

On the other hand, provision under Transfer of Property Act deals with right of lessee to enjoy such a property for period expressed or implied or in perpetuity. Thus, application of definitions in both Statutes are in the different context altogether.

14. In this regard, it would be relevant to take note of the observations made in Paragraph No. 27 of the judgment of Hon'ble Supreme Court in case of Associated Hotels of Indian Limited (supra) which reads thus :-

> *"27. There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain*

time in consideration of a price paid or promised. Under s. 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest, transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor. Whereas s. 52 of the Indian Easement Act defines a licence thus : 'Where one person grants to another, or to a definite number of other persons, a right to do or continue to do in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unalwful, and such right does not amount to an easement or an interest in the property, the right is called a licence.' Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. At one time it was thought that the test of

exclusive possession was infalliable and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in Errington v. Errington (1), wherein Lord Denning reviewing the case law on the subject summarizes the result of his discussion thus at p. 155: 'The result of all these cases is that, although a person who is let into exclusive possession is prima facie, to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy.' The court of Appeal again in Cobb v. Lane (2) considered the legal position and laid down that the intention of the parties was the real test for ascertaining the character of a document. At p. 1201, Somervell.. L.J., stated : '..... the solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties.' Denning, L.J., said much to the same effect at p. 1202: 'The question in all these cases is one of intention: Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land ?' The following propositions may, therefore, be taken as well-established : (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the

parties-whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease. Judged by the said tests, it is not possible to hold that the document is one of licence. Certainly it does not confer only a bare personal privilege on the respondent to make use of the rooms. It puts him in exclusive possession of them, untrammelled by the control and free from the directions of the appellants. The covenants are those that are usually found or expected to be included in a lease deed. The right of the respondent to transfer his interest under the document, although with the consent of the appellants, is destructive of any theory of licence. The solitary circumstance that the rooms let out in the present case are situated in a building wherein a hotel is run cannot make any difference in the character of the holding. The intention of the parties is clearly manifest, and the clever phraseology used or the ingenuity of the document writer hardly conceals the real intent. I, therefore, hold that under the document there was transfer of a right to enjoy the two rooms,

and, therefore, it created a tenancy in favour of the respondent."

The above observations clearly indicate that the nomenclature of the document is not decisive for determination of a nature of transaction to be 'lease' or 'license'. As held by the Supreme Court, the real test is the intention of the parties whether they intend to create a lease or license. In the instant case, apart from the fact that the documents in question are titled as leave and license agreement, admittedly, these documents contain recitals with regard to there being no exclusive possession of the licensee over the subject property. Further, admittedly, all sheds are removed as per compliance report dated 04.03.2020. Pertinently, none of the occupiers of these sheds have claimed themselves to be the lessee of the property. Thus, on the face of it, there is material on record to indicate that this is a case of license and not lease. The rule of literal and strict interpretation for the purpose of penal consequence would undoubtedly lead to the conclusion that the transaction is 'licence' and the same is not covered by Section 51 of the Act.

15. Learned Counsel for the informant and Wakf Board sought to canvass that even license in respect of said construction carried out

on graveyard would be covered by the provisions of Section 51 of the Act. They also argued with regard to the conduct of the Petitioners of carrying out such construction which is wholly impermissible. Even if it is accepted for the sake of arguments that the conduct of the Petitioners of carrying out construction of tin sheds under the guise of protecting the property is not justified, it could not become *ipso facto* an offence unless it is so made by the Statute. Perusal of Section 51 of the Act itself contemplates lease among others and not license. This is more so when the title of the said section provides for alienation of the properties being barred without consent of the Wakf Board. Thus, to read the lease as license is wholly impermissible. More particularly, in the facts of the case, as stated herein above, there was license in respect of the said properties. Even though this Court does not approve the conduct of Petitioners of carrying out construction on a graveyard, it is not permissible for the Court to hold that it becomes an offence since it has not been made so specifically under the Wakf Act.

16. Learned Counsel for Wakf Board refers to the provisions of Section 32(4) and 32(5) to canvass that in view of the said provisions, non-obtainment of permission for construction of sheds amounts to

offence. It would be relevant to take note of the said provisions which reads thus :-

> 32. Powers and functions of the Board :-
>
> (1) xxx
>
> (2) xxx
>
> (3) xxx
>
> (4) Where the Board is satisfied that any [waqf] land, which is a [waqf] property [has the potential for development as an educational institution, shopping centre, market, housing or residential flats and the like], market housing flats and the like, it may serve upon the mutawalli of the concerned [waqf] a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.
>
> (5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the works required to be executed in terms of the notice, it may, take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such work from [waqf] Funds or from the finances which may be raised on the security of properties of the [waqf] concerned, and control and manage the properties till such

time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate changes incurred on the property are recovered from the income derived from the property:

Provided that the Board shall compensate annually the mutawali of the concerned [waqf] to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) xxx

Bare perusal of the said provision indicates that it is only enabling provision, where the Board, if satisfied that the property has potential for development, to serve upon the Mutawali of concerned Wakf a notice requiring him to convey decision where he is willing to develop the work specified in the notice. This cannot be construed as non-obtainment of permission to constitute as an offence.

17. As held earlier, since the Petitioners being Mutawali are in possession of the Wakf property, there is no question of they purchasing or being in possession of the same without prior sanction of the Board. As such, this Court finds substance in the contention

of learned Senior Counsel for the Petitioners that no offence under Section 52A of the Act is made out against them.

18. Insofar as offences under Indian Penal Code are concerned, for want of satisfying essential ingredients, no offence can be said to have been committed of criminal breach of trust. In order to constitute said offence, necessary ingredients as contemplated by Section 405 of the Indian Penal Code must be present. Similarly, there is nothing to indicate that the Petitioners have cheated anyone. As such offence under Section 420 of the Indian Penal Code is also not made out.

19. Even it is sought to be canvassed before this Court that the Petitioners have earned income from the said license, however, there is no evidence to show that the Petitioners have mis-appropriated the said amount. During the course of arguments, it was pointed out on behalf of the Petitioners that the amount equivalent to 7% of the income was deposited with the Wakf Board, so also rest of the amount is used for maintenance of the property. There is nothing on record to indicate contrary.

20. The law on the point of exercise of extraordinary powers by High Court to quash criminal proceeding is well settled in view of judgment of Supreme Court in case of State of Haryana and others Vs. Bhajan Lal and others, **1992 SCC (SUPP) 1 335**, which gives guidelines for the decision of quashment of criminal proceedings. The principles laid down therein which act like beacon to the Courts are as under :

> *" 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary 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.*
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> *(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 FIR 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 FIR 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 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 of 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."

Consideration of these principles in the light of facts of the case demonstrates that even if entire material collected during the investigation is accepted as it is, no offence under penal code or the Act has been made out. In such circumstances to call upon the Petitioners to undergo rigours of trial would amount to abuse of process of Court.

21. In view of above, this Court finds that this is a fit case for quashment of the First Information Report, consequent filing of charge-sheet and order of issuance of summons against the Petitioners. In the result, petition is allowed in terms of prayer clauses 'B', 'C', 'C-1' and 'D-3'.

22. Pending application does not survive and stands disposed of.

(R. M. JOSHI, J.)

dyb