
(2012) 11 BOM CK 0031

In the Bombay High Court

Case No : Criminal Writ Petition No. 2809 of 2011

The State of Maharashtra

APPELLANT

Vs

The Police Inspector and Another

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 81
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 199, 420, 465, 467, 468

Citation : (2013) ALLMR(Cri) 618

Hon'ble Judges : Sadhana S. Jadhav, J;A.S. Oka, J

Bench : Division Bench

Advocate : V.B. Konde-Deshmukh, app, for the Appellant;

Judgement

A.S. Oka, J.—By this Petition under Article 226 of the Constitution of India, a prayer is made for quashing and setting aside a First Information Report bearing C.R. No. 227 of 2011 registered with Mohol Police Station, Mohol, District--Solapur, for offences under Sections 465, 467, 468, 472, 420 and 199 of the Indian Penal Code. A prayer is made for quashing the said First Information Report as against one Shri Arvind Gajanan More, who is a Judicial Officer who was working at the relevant time as the Assistant Charity Commissioner, Osmanabad. At the relevant time, he was holding additional charge of the post of Assistant Charity Commissioner, Solapur. By an order dated 1st February, 2012, this Petition was fixed for final hearing. The office noting shows that the notice has been duly served to the second Respondent who is the first informant. The learned APP invited our attention to the complaint of the second Respondent on the basis of which First Information Report was registered. He pointed out that the said Shri Arvind G. More in his capacity as the incharge Assistant Charity Commissioner, Solapur, accepted the charge report filed u/s 22 of the Bombay Public Trusts Act, 1950 in relation to a public trust by the name "Pramod Shikshan Va Samaj Vikas Mandal", Mohol, District-Solapur. Only allegation made

against him is that fabricated documents were produced in the change report proceedings and without calling the members of the earlier managing committee and without properly scrutinising the matter, acting in conspiracy with the other accused, the change report was approved by him. The submission is that on plain reading of the First Information Report, no offence is made out against Shri Arving More.

2. We have perused the First Information Report. The first informant stated that his father and several others came together and established the said Trust by the name Pramod Shikshan Va Samaj Vikas Mandal, Mohol, District - Solapur. Initially his father was the President of the Trust. The first informant claimed that from 18th May, 2009 to 15th November, 2010, he was the Secretary of the said Trust. He stated that two accused persons Anna Kondiba Gund and Kishor Anna Gund took away a list of members and other original documents from the office of the Trust under the pretext of taking photocopies thereof. It is alleged that the said documents were not returned by them. Thereafter, a Change Report (Enquiry No. 864 of 2010) was filed before the Assistant Charity Commissioner, Solapur. It is alleged that the signatures of the first informant and the President of the said Trust were forged and it was claimed that the persons named in the change report took over the management of the Trust.

3. The only allegation made against the said Shri Arvind More is that he knew that the forged and fabricated documents were produced but without issuing notice to the members of the earlier Managing Committee and without proper scrutiny, acting in conspiracy with the co-accused, he approved the change report.

4. Thus, the only allegation made against Shri More is as regards the order dated 31st December, 2010 passed by him on change report (Enquiry No. 864 of 2011). A certified copy of the Change Report and the order passed on the Change Report are annexed to this Petition. On the Change Report, there is a specific order passed directing the notices to be issued to the outgoing Trustees (Members of the earlier Managing Committee). It is well settled that the proceedings of the Change Report u/s 22 of the Bombay Public Trusts Act, 1950 are in the nature of the judicial proceedings. The allegation made against the Assistant Charity Commissioner is that he passed an order in judicial proceedings, acting in conspiracy with the other co-accused.

5. On the basis of the judicial order passed by the Assistant Charity Commissioner, no offence could have been alleged against him. Section 81 of the Bombay Public Trusts Act, 1950 reads thus:-

81. Indemnity from suits and proceedings

No suit, prosecution or other proceeding shall be instituted against the State Government or any officer or authority [or representative of the Charity Commissioner] in respect of anything in good faith done or purporting to be done under this Act.

Hence, this is a fit case to exercise power u/s 226 of the Constitution of India as well as Section 482 of the Code of Criminal Procedure, 1973 for quashing the proceedings.

Accordingly, we pass the following order:

ORDER:

(a) The Rule is made absolute in terms of prayer clause (c) which reads thus:-

(c) By suitable Writ, order, directions kindly be issued to quash and set aside F.I.R. bearing C.R. No. 227 of 2011 registered with Mohol Police Station, Mohol on 26.6.2011 by the complainant Subodh Krishna Shinde for offences punishable under Sections 465, 467, 468, 472, 420, 199 of IPC against Arvind Gajanan More, the Assistant Charity Commissioner, Osmanabad, at the relevant time holding additional charge of District Solapur as Assistant Charity Commissioner, Petitioner herein.

(b) It is made clear that the First Information Report bearing C.R. No. 227 of 2011 is quashed and set aside only as against Shri Arvind Gajanan More.

(c) It is made clear that we have not made any adjudication on the case made out as against the other co-accused.