

(2014) 07 BOM CK 0011

In the Bombay High Court

Case No : Criminal Application No. 162 of 2014

Vikar Ahmad Khan Gyasuddin Khan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22
Criminal Procedure Code, 1973 (CrPC) — Section 340
Penal Code, 1860 (IPC) — Section 196, 197, 198, 199, 34

Citation : (2014) ALLMR(Cri) 3941

Hon'ble Judges : C.V. Bhadang, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : Mir Nagman Ali, Advocate for the Appellant; S.S. Jachak, APP, Advocate for the Respondent

Judgement

B.P. Dharmadhikari, J.—Heard Shri Nagman Ali, learned counsel for the applicants and Mrs. Jachak, learned APP for respondent No. 1. Nobody appears for respondent No. 2. This Court has issued notice for final hearing on 30.03.2014 and restrained the respondents from taking coercive steps against the applicants until further orders.

2. Though, Respondent No. 2 is served, he has chosen not to appear. On 27.06.2014, this Court gave him one more opportunity to appear and contest. Today again he is absent.

3. Shri Nagman Ali, learned counsel submits that the Change Report proceedings filed by the competent person informing the office of the Assistant Charity Commissioner, Yavatmal, about the change vide Change Report Enquiry No. 316 of 2007 are still pending. The documents alleged to have been fabricated are presented in that matter and are being looked into by said authority. He contends that the applicants before this Court are shown as accused only with story that they have procured stamp papers on which the resignations of Respondent No. 2 and other persons have been fabricated. He points out that the

stamp papers have been purchased on 15.10.2007 and on that very date, Respondent No. 2 and other trustees resigned. He states that in any case whether the documents are fabricated or not, can be looked into by the Assistant Charity Commissioner.

4. The learned APP relies upon reply affidavit. She submits that in view of the allegations made, investigation has been done and genuineness of signatures of trustees, who have allegedly resigned, is being verified. She contends that prima facie an offence is made out.

5. It is apparent that Change Report proceedings for recording a Change, in view of documents in dispute, are already subjudice. In those proceedings, question whether the resignations are fabricated or genuine, will be required to be gone into by the Competent Authority and if that authority finds that fabricated documents have been tendered before it, it has powers to proceed against the persons found responsible, under Sections 196 to 199 of Indian Penal Code read with Section 340 of Code of Criminal Procedure. If said grievance is made or if such complaint is received, the police authorities can thereafter look into that controversy. Any investigation by the police authorities at this stage may have adverse effect on application of mind by the competent authority under Section 22 of the Bombay Public Trust Act, 1950.

6. In this situation, we find that as on date, no cognizance of the grievance made in FIR can be taken. Hence, with liberty to Respondent No. 2 or other trustees whose signatures are alleged to have been fabricated, to approach appropriate forum in accordance with law, at appropriate juncture, we set aside the FIR No. 904 of 2013 dated 27.12.2013 under Section 468, 470 and 34 of the Indian Penal Code. Criminal Application is accordingly allowed and disposed of. However, there shall be no order as to costs.

Certified copy expedited.