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criwp451.24

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

**CRIMINAL WRIT PETITION NO.451 OF 2024
WITH
CRIMINAL APPLICATION NO.2560 OF 2025**

**MANSINGH BALASAHEB PAWAAR AND OTHERS
VS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. A. P. Mundargi, Senior Counsel i/b Mrs. Rashmi Kulkarni,
Advocate a/w Mr. Subir Sarkar, Advocate for the petitioners
Mr. Rahul Joshi, Advocate for the respondent No.2
Smt. Chaitali Choudhari-Kutti, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

RESERVED ON : 25th JULY, 2025

PRONOUNCED ON : 15th SEPTEMBER, 2025

P. C.

1. Heard the parties.
2. This petition is taken up for final disposal at the stage of admission with the consent of the parties.
3. The petitioners are the President and members of one trust namely Shri Chatrapati Shivaji Shikshan Prasarak

Mandal. Respondent No. 1 is the State. Respondent No. 2 is the complainant.

4. The petitioners have approached this court challenging an order dated 23-11-2023 passed in Cri. Revision Application No. 87/2018 by the learned Additional Sessions Judge, Aurangabad thereby confirmed an order dated 24-01-2018 passed below Exh.1 in Cri. M. A. No. 410/2015 by the learned JMFC, Kannad issuing process for the offences punishable under Sections 406, 420, 468 r/w 120-B of the IPC.

5. The facts, in short, for the purpose of deciding this petition are as under:

6. That the petitioners are the members of the trust namely Chhatrapati Shivaji Shikshan Prasarak Mandal, Kannad. A scheme of the said Trust was framed in 1989, by judgment of the learned Joint Charity Commissioner, Aurangabad. Some of the petitioners are trustees since then.

7. Respondent No. 2-member of the said trust filed a complaint stating that in 1972, the society with the approval of the Town Planning Department got layout sanctioned in the land belonging to the trust survey No.40/2. In the said layout 84 plots were shown. Remaining land was shown as open space. All 84 plots were sold. Thereafter again 22 more plots were demarcated in the open space bearing Nos. 85 to 106 and those also came to be sold. Some portion was shown as green zone. It is alleged that plots are sold without obtaining previous sanction from the Charity Commissioner under section 36 of the Maharashtra Public Trust Act. It is alleged that Ori. accused No. 1 is the Director since 1990 and since 1994 he is the Secretary looking after the business of the society. The original accused Nos. 2 to 9 are the Directors. Accused No. 10 is the member of the society. Accused No. 13 is the Clerk in the school run by the society. It is further alleged that again 28 plots bearing Nos. 107 to 134 were demarcated. Accused Nos. 1 to 9 again sold those plots to persons close to them. It is alleged that by this, they

have committed an act of breach of trust, cheating and forgery. No papers were supplied of these plots Nos. 107 to 134. It is, thus, alleged that all the persons are responsible for the said transaction and therefore, are guilty of the offences alleged.

8. The learned JMFC, Kannad recorded a verification and gone through documents and thereafter called report under section 202 of the Cr. P. C. from the Police Station, Kannad. The police recorded statements of various persons and submitted a report. It is recorded in the report that a Civil Suit bearing No.600/2015 is pending in respect of these plots. The learned Magistrate, thereafter issued a process. Said order came to be challenged by the present petitioners by filing a revision. The learned Sessions Judge rejected the revision observing that the learned Magistrate has issued process by considering the enquiry report under section 202. The petitioners appear to be office bearers. Their statements are considered. It is considered that the purchasers happen to be relatives of the Directors. It recorded conclusion that 20 unauthorized plots bearing Nos.

107 to 126 were illegally sold by making alteration in the original layout plan and later on, plots were regularized. So far as contention of the petitioners that they were not the office bearers at the relevant point of time and had no knowledge. The court observed that it can be only by holding trial.

9. The learned Senior counsel vehemently argued that no ingredients of any of the offences are present against the petitioners. The trust owns Survey No. 40/2, adm. 16.5 Acres. During period 1972-1975, 84 plots were sold. Additional 22 plots were sold till 1978. He submits that for some of the period even father of the complainant was trustee for the year 1984-1989 and 2000-2004. He was also a Vice-President of the trust for a period from 2008-2011. Now, the complaint is filed in 2015. The said transfers have already been regularized. The allegations are not specific. There was already a complaint filed in the year 2011 with the very same allegations. Said complaint was rejected. From the report of the police, it is clear that there is no specific allegation against any of the petitioners. It was

necessary to make specific allegations so far as forgery is concerned. There is no principles of vicarious liability applicable in the criminal law unless statutes provide specifically. Sections 406 and 420 of the IPC cannot go together. Making allegations are not sufficient to attract the offence. The learned trial court, thus, failed to apply its mind properly. The learned Sessions Judge also failed to appreciate the submission and has passed the order which requires to be quashed and set aside.

10. The learned Advocate for the respondent Mr. Joshi, opposed the petition. He strenuously submits that the respondent being member of the trust has filed a complaint. The complaint makes out a case for investigation. When a case is made out for investigation, it was necessary for the court to direct the police to carry out an investigation under section 156 (3). The complaint is made against all the trustees. It is clear from the record that the plots were demarcated. The layout was prepared and first 88 plots were sold. However, there is no proper procedure followed for demarketing new plots and those

are sold illegally. All the plots are sold clearly in violation of Section 36 as no permission is ever obtained by the trust before disposing off the plots. Looking to the facts that some of the purchasers of the plots happens to be relatives of the trustees clearly shows that there are malafide. By doing such activities the applicants thereby have caused unlawful loss to the trust. He has invited attention to the copies of allotment letters annexed alongwith the affidavit-in-reply and mutation entries. He further submits that though the plots were sold for consideration, the audit does not reflect receipts of amount from the transactions. He, thus, prays that the petition deserves to be dismissed.

11. The learned APP also supports the impugned order. It is submitted that no interference is required at the hands of this court while exercising the jurisdiction under Article 227 of the Constitution of India. He also prays for appropriate orders.

12. During the course of the argument the learned senior

advocate for the petitioners relied upon the following judgments:

1. Mohammed Ibrahim and others Vs State of Bihar and Another¹
2. Delhi Race Club (1940) Ltd and Others Vs State of Uttar Pradesh and Another²
3. Rex Vs John Mc Iver³
4. R. Kalyani VS Janak C. Mehta and Ors⁴
5. S. M. S. Pharmaceuticals Ltd. Neeta Bhalla and Ors⁵
6. Sham Sunder Ors. Vs State of Haryana⁶

13. In the case of Mohammad Ibrahim (supra) the Hon'ble Apex Court considered the ingredients of section 415. In the said case, it was not a case of the complainant that any of the accused tried to deceive him either by making false or misleading representation or any other action or omission, nor was it his case that the accused induced him by any fraudulent or dishonest intention making him deliver any property. It is held that no offence of cheating was made out.

14. In the present case also this court finds that it is not

1 (2009) 8 SCC 751

2 2024 SCC OnLine SC 2248

3 1936 SCC OnLine Mad 11

4 (2009) 1 SCC 516

5 AIR 2005 SC 3512

6 AIR 1989 SC 1982

the case of the respondent-complainant that he is cheated. It is only his case that the petitioners have sold some of the plots belonging to the trust to other persons.

15. In the case of Delhi Race Club (supra) the Hon'ble Apex Court considered the ingredients of the criminal breach of trust. It was ultimately held that continuation of the proceeding would be an abuse of process of law, if no ingredients are present. The casual approach of the courts below in issuing notice is not appreciated. It is further held that while dealing with private complaint, it is duty of the Magistrate to meticulously examine the contents of the complaint to determine whether offence of cheating or criminal breach of trust is made out. It is observed that both the offences of cheating and breach of trust cannot go together.

16. In the case of Rex (Supra) the full bench of Madras High Court considered the word 'entrusted' as appearing in section 406 of the IPC. In the case of R Kalyani (Supra) it is

considered that allegations in the FIR were for commission of the offence under general statute. A vicarious liability can be fastened only when provision of statute provides such and not otherwise by creating legal fiction.

17. In the judgment of Shyam Sundar (supra) the Hon'ble Apex court considered the criminal liability under penal provision and not a civil liability. It is held that penal provision must be strictly construed in the first place. There is no vicarious liability in criminal law unless the statute takes that also within its fold. Considering above the proceeding was held to be an abuse of process of law. Conviction and sentence of appellants Nos. 1, 2 & 4 in that case was set aside.

18. In the case of S. M. S. Pharmaceuticals Ltd. the court considering the provision of N. I. Act for dishonour of cheque, it is held that no one can be held criminally liable for an act of another. However, it is held that it is subject to exception on account of specific provision made in the statute like section 141

of the N. I. Act.

19. The learned advocate for the respondents relied upon the following judgment:

1. Partha Nayak Vs State of Orissa⁷
2. Lajwati @ Bimla Vs State of Haryana and others⁸
3. Madhav and others Vs State of Maharashtra⁹
4. Nupur Talwar Vs CBI and others¹⁰
5. Sonu Gupta Vs Deepak Gupta and others¹¹
5. Jagdish Chintaman Khodke Vs State of Maharashtra and others¹²

20. In the case of Partha Nayak (supra) the Orissa High Court held that it is not necessary for the court to give detailed reasoning on the merits of the case so as to find out if the allegations and charges are true or not. The court has to apply its judicial mind and test the material on record.

21. In the case of Lajwati @ Bimla (Supra) the learned Magistrate was satisfied whether there is sufficient grounds for proceeding against the accused and not that the evidence should

7 2024 (46) RCR Cri. 287

8 2014 (1) RCR Cri. 929

9 2013 (3) Mh. L. J. Cri. 526

10 2012 (3) RCR Cri. 595

11 2015 (2) RCR Cri. 33

12 2017 ALL MR Cri 620

be sufficient to convict the accused or even prima facie case for framing of the charge.

22. In the case of Madhao and others (supra) it is held that whether the learned Magistrate orders investigation by the police before taking cognizance under Section 156(3) and receives the report. He can act on the report and discharge the accused or straightway issue process against the accused or apply his mind in the complaint filed and take action under section 190 of the Code.

23. In the case of Nupur Talwar (supra) the Hon'ble Apex Court considered the provision of section 204 of the Cr. P. C. It is discussed that section does not mandate the learned Magistrate to explicitly state reasons for issuance of summons. It only provides that if the learned Magistrate is of the opinion of taking cognizance of an offence and there is sufficient ground for proceeding, summons may be issued. Thus, it is only to see that whether there is any material making out sufficient case for

issuance of summons. It is further discussed that it is necessary to see as to whether foundational facts make out a case to take cognizance. There is no dispute about said proposition. In this case, what needs to be seen is as to whether a case is made out to issue process on the basis of facts stated in the complaint. In the said case, the Hon'ble Court observed that the learned Magistrate had given detail reason in his order issuing process.

24. In the case of Sonu Gupta (Supra) the Hon'ble Apex Court considered provision of section 204 and 190 of the Cr. P. C. It is held that when prima facie case is made out while taking cognizance of the offence then merits of the defence version not to be considered at that stage of taking cognizance.

25. In the case of Jagdish Khodke (Supra) this court held that examination of complainant and formal verification need not be in detail. Recording of verification is sufficient compliance of section 200 of the Cr. P. C.

26. In the present case this court has to see as to whether a case is made out to issue process against the present petitioners. From the allegations itself it is seen that allegations are in respect of the transfer of the plots in favour of the persons. Allegations are that the plots from land belonging to the trust are sold without permission of Charity Commissioner under section 36 of the Maharashtra Public Trust Act. The allegations are not specific against any of the persons shown as accused in the complaint. So far as initial 84 plots are concerned, there is no complaint by the complainant.

27. On hearing the parties, this court finds substance in the argument of the learned senior counsel that in the complaint no case of vicarious liability is made out. Allegations are that when these petitioners were trustees of the trust, plots are sold. No specific role is attributed to any of the petitioners. There is nothing to indicate that as to how each of the petitioner is liable for criminal action. It is also pointed out that proceedings are going on before the Joint Charity Commissioner in respect of the

selling of the plots. It is also seen that for some time even father of the informant/complainant was office bearers of the trust.

28. Coming to the order of issuance of process, it shows that learned Magistrate has considered the complaint, verification, report of the police under section 202 of the Cr. P. C. and documents on record. The court also saw the map of survey No. 40/2, allotment letters and other documents relating to the society on record. It is further recorded that prima facie it appears that allegations are made out and there is sufficient ground to proceed against accused Nos. 1 to 13 and thus process is issued.

29. Considering the submissions of the learned senior counsel that sections 406 and 420 cannot go together and these are mutually exclusive. This court finds that the learned Magistrate has committed an error in issuing summons under both these sections. Though the learned Magistrate has stated about police report, however, police report is not specific and

does not specifically speak as to which of the accused is criminally liable. The learned Sessions Judge in the revision has also failed to appreciate all these things and maintained the order passed by the learned Magistrate. This court, thus, finds that the said order deserves to be set set aside. Hence, the criminal writ petition stands allowed in terms of prayer clauses-(B),(C) & (D).

30. The criminal writ petition stands disposed off.

31. In view of disposal of the criminal writ petition, pending criminal applications, if any do not survive and stand disposed off.

[KISHORE C. SANT, J.]