

**HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD**

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**Criminal Petition No.10883 OF 2017**

Between:

Syed Mohd.Naseeruddin Jilani

... Petitioner

And

The State of Telangana

Rep. by its Public Prosecutor and another ..Respondents/Complainant

DATE OF JUDGMENT PRONOUNCED :15.12.2023

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

- |   |                                                                              |        |
|---|------------------------------------------------------------------------------|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments?   | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals       | Yes/No |
| 3 | Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

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*K.SURENDER, J*

**\* THE HON'BLE SRI JUSTICE K. SURENDER**

**+ CRL.P. No.10883 of 2017**

% Dated 15.12.2023

# Syed Mohd.Naseeruddin Jilani

... Petitioner

And

\$ The State of Telangana

Rep. by its Public Prosecutor and another ... Respondents/Complainant

**! Counsel for the Petitioner:** Sri Katika Ravinder Reddy

**^ Counsel for the Respondents:** Addl.Public Prosecutor for R1  
Sri Farhan Azam Khan for R2

**>HEAD NOTE:**

**? Cases referred**

<sup>1</sup> 2007(1) ALD (CrL.) 587 (AP)

2 AIR 2016 Kerala 96

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL PETITION NO.10883 OF 2017****ORDER:**

1. The petitioner is questioning the charge sheet filed by the Chandrayangutta Police in C.C.No.379 of 2017 on the file of Chief Metropolitan Magistrate, Nampally, Hyderabad for the offence under Sections 406 and 420 of IPC.

2. The case of the *defacto* complainant is that the petitioner/A1 and another, who are mutawallis of Towliath committee received income/ revenue from the properties pertaining to Noria Noor Industries, Nooria Arabic College, Khankhan-e-nooria and its attached properties. The funds which were collected from the donors were misused for personal gains. The budget was not submitted and also the income and expenditure statement to the Waqf Board. Without taking permission from the Waqf Board, function hall was constructed in the property attached by Waqf. The said property generated heavy revenues, but the accused without showing the generated revenue, misused the funds. The funds received by way of donations were also misappropriated. The said complaint was filed by the Chief Executive Officer of the Telangana State Waqf Board. On the basis of the said complaint,

the police filed charge sheet for the offences under Sections 406 and 420 of IPC.

3. Learned counsel appearing for the petitioner would submit that Section 52-A of the Waqf Act, 1995 (for short 'the Act') penalizes any person who 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. Further, under clause (3) of the Section 52-A of the Act, Court is restrained from taking cognizance except on a complaint made by the Board or any officer duly authorized by the State Government. Since charge sheet is filed by police, the cognizance taken in bad in law.

4. Learned counsel argued that in the said circumstances, since the petitioner was allegedly dealing with the Waqf Property, any misappropriation, cheating or any other allegation in relation to movable or immovable property can only be made liable under Section 52-A of the Act and the police cannot file charge sheet for the offence under Sections 420 and 406 of IPC.

5. Further Counsel relied on the provision under Section 68 of the Act wherein the procedure has been prescribed when any mutawalli or committee has been removed by the Board in accordance with the provisions of the Act, they shall handover the charge and deliver possession of the records, accounts of properties of the Waqf including cash to the successor mutawalli. In the situation of handing over of the records etc., to the successor mutawalli, the procedure adopted can only be under Section 68 of the Act. Since the allegation is that the records were not handed over giving all details, any misappropriation or any action that has to be taken in respect of Waqf properties can only be under Sections 52A and/or the procedure and punishment under Section 68 of the Act.

6. According to the Counsel, in view of Section 52-A and Section 68 of the Act, the Court is barred from taking cognizance in the charge sheet filed by the police and it is for the Board or any officer duly authorized by the State Government to lodge complaint in accordance with Section 2(d) of the Criminal Procedure Code. The provisions of IPC and Cr.P.C will not apply. For the said reasons, the charge sheet being in violation of Sections 52-A and 68 of the Act, the proceedings have to be quashed against the petitioner.

7. Section 52-A and section 68 of the Act are extracted:

**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:

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.

(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.

(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.”

**“68. Duty of mutawalli or committee to deliver possession of records, etc.**

(1) Where any mutawalli or committee of management has been removed by the Board in accordance with provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee so removed from the office (hereinafter in this section referred to as the removed mutawalli or committee) shall hand over charge and deliver possession of the records, accounts and all properties of the <sup>1</sup> [waqf] (including cash) to the successor mutawalli or the successor committee, within one month from the date specified in the order.

(2) Where any removed mutawalli or committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or committee within the time specified in sub-section (1), or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application, accompanied by a certified copy of the order appointing such successor mutawalli or committee, to any <sup>1</sup> [District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] within the local limits of whose jurisdiction any part of the <sup>2</sup> [waqf] property is situated and, thereupon such <sup>1</sup> [District Magistrate, Additional District Magistrate, Sub-Divisional Magistrate or their equivalent] may, after giving notice to the removed mutawalli or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash )

of the <sup>2</sup> [waqf] to the successor mutawalli or the committee, as the case may be, within such time as may be specified in the order.

(3) Where the removed mutawalli or any member of the removed committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by <sup>3</sup> [any Magistrate] under sub-section (2) the removed mutawalli or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

(4) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by <sup>3</sup> [any Magistrate] under sub-section (2), <sup>3</sup> [any Magistrate] may authorise the successor mutawalli or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such police assistance as may be necessary for the purpose.

(5) No order of the appointment of the successor mutawalli or committee, shall be called in question in the proceedings before <sup>3</sup> [any Magistrate] under this section.

(6) Nothing contained in this section shall bar the institution of any suit in a competent civil court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by <sup>3</sup> [any Magistrate] under sub-section (2)."

8. The provision under Section 52-A of the Act was introduced with effect from 01.11.2013. The provision is confined to either alienation, purchasing or taking possession of any movable or immovable waqf property without sanction of the Board and made a punishable offence. It does not cover every aspect of Waqf property as claimed by the learned counsel appearing for the petitioner. Criminal misappropriation, cheating, fabrication of records and allied offences are not covered under Section 52-A of the Act.

9. Similarly, under Section 68 of the Act, if any mutawalli or committee of management has been removed by the Board, the said mutawavalli or committee have the duty to handover the charge and deliver possession of the records, accounts and all properties of the Waqf to the successors. Failure to handover such records, accounts and properties to the successors within the time prescribed or in any manner obstructs, the successor committee or mutawalli, in such an event, an application can be made to the District Magistrate, Additional District Magistrate as stated in the provision within the local jurisdiction. The provision under Section 68 confines to the handing over of the charge to the successors and will not cover any criminal acts committed either by the mutawalli or the Management Committee during their tenure for cheating or criminal misappropriation or other offences relating to property.

10. Section 52-A and Section 68 of the Act confine to the specific contingencies mentioned in the provisions. If the intention of the Legislature was to prohibit application of any other enactments including IPC, there would have been specific mention in the provision or the enactment itself by adding non obstante clause. Non obstante clause refers to a statutory provision intended to give an overriding effect over other provisions or enactments. Any



provision cannot be read to include what is not intended by the Legislature nor what is not specified in any provision or enactment.

11. If the intention of the Legislature was to include all penal provisions regarding Waqf properties, it would have been specifically mentioned in the Enactment. Nothing in the Waqf Act prohibits application of either the procedure prescribed under Cr.P.C or the penal provisions of IPC except in the specified circumstances in Section 52-A and the procedure prescribed under Section 68, while handing over charge to the successor mutawalli or management committee. Offences against property are Chapter-XVII of IPC pertaining to offences against property. Chapter XVIII pertains to offences relating to documents and property marks. As already stated nothing in the Waqf Act prohibits application either Chapters XVII or XVIII of IPC.

12. The case against the petitioner and another is that revenues and income from the Waqf properties including funds from donors were collected and misused for personal gains during their tenure. The alleged criminal acts in the present case do not fall either under Section 52-A or relates to the handing over of documents etc., under Section 68 of the Act.

13. Learned counsel for the petitioner relied on the judgment of this Court in the case of **Syed Azher Hussain and others v. Iqbal Ahmed Khan and others**<sup>1</sup>. In the said case, this Court observed that general provisions of IPC will not be applicable for non delivery of records, accounts etc., by the removed mutawalli. The judgment is not applicable in the present facts of the case. Facts of the case are not narrated in the judgment, except stating that regarding non delivery of records to the successor mutawalli or Managing Committee. In fact, at para 4 of the judgment the learned Judge observed that the general provisions of IPC are not applicable to non delivery of records, accounts etc. The present case is not one of disputes regarding handing over of documents to the successor mutawalli or management committee.

14. The other judgment relied on by the learned counsel is in the case of **Puthukkodi Aboobacker and others v. Sub-Inspector of Police, Valanchery**<sup>2</sup>. In the said case, charge sheet was filed by the police under Section 52-A of the Waqf Act and not under the provisions of IPC. In the said circumstances, the Court found that under Section 52-A (3), the Court is prohibited from taking cognizance of police report. The said fact is also not disputed.

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<sup>1</sup> 2007(1) ALD (CrL) 587 (AP)

<sup>2</sup> AIR 2016 Kerala 96

However, the facts of the case are not narrated and the only offence alleged by the police was under Section 52-A of the Waqf Act.

15. Both the Judgments relied on by the Counsel have no bearing on the present facts of the case. At the cost of repetition the allegations are of criminal misappropriation of the income received from Waqf properties and also the donations received. Prima facie the offence of criminal misappropriation is attracted.

16. In view of the above discussion, I do not find any infirmity with the charge sheet being filed by the police on the facts of the present case. However, the Magistrate shall conclude about the complicity or otherwise of the petitioner on the basis of evidence adduced during trial.

17. Criminal Petition is dismissed.

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**K.SURENDER, J**

Date: 15.12.2023

Kvs

**THE HON'BLE SRI JUSTICE K.SURENDER**

**CRIMINAL PETITION NO.10883 OF 2017**

**Dt. 15 .12.2023**

kvs