

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.11919 OF 2022

Between:

Naseeruddin Jeelani and another ... Petitioners

And

The State of Telangana,
rep. by its Public Prosecutor,
High Court for the State of Telangana,
Hyderabad & another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 04.01.2023

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 the fair copy of the Judgment? Yes/No

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 11919 of 2022

% Dated 04.01.2023

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High Court for the State of Telangana,
Hyderabad & another

... Respondents

! **Counsel for the Petitioners:** Sri. M.A.K.Mukheed

^ **Counsel for the Respondents:** Sri S.Sudershan

Additional Public Prosecutor for R1

>HEAD NOTE:

? Cases referred

¹ 2015 LawSuit (Ker) 1226

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.11919 OF 2022****ORDER:**

1. The petitioner/A1 has filed this application for quashing the proceedings against him pending in C.C.No.3742 of 2022 on the file of the Chief Metropolitan Magistrate at Nampally, Hyderabad.

2. The case of the prosecution is that this petitioner and another were Muthawallis and subsequent to their termination, this petitioner and another had no powers to operate the accounts of the institution, which is Jamia Ilaheia Nooria. However, this petitioner and another withdrew an amount of Rs.6,15,101/- from the institution's bank account though they were terminated in accordance with procedure by Towliath Committee vide proceedings dated 30.01.2017.

3. On the basis of the said withdrawal of amount illegally by this petitioner and another, complaint was filed, which was registered for the offences under Sections 420 and 406 r/w 34 of IPC. After investigation, the Police Chandrayanagutta filed charge sheet for the said offences.

4. Learned counsel for the petitioner would submit that the 1st respondent police has no jurisdiction to file charge sheet in the affairs of the Waqf Institutions. The present Waqf institution namely Jamia Ilahiia Nooria was formed in accordance with the Waqf Act and any illegalities committed in running the said institution, it is an offence under Section 52A of the Waqf Act, 1995 and under Section 52A(3) of the Act, there is a prohibition from the police filing a charge sheet after investigation. The Court cannot take cognizance of an offence in the said facts as it is barred under Section 52A of the Act, 1995.

5. For the sake of convenience, Section 52A of the Waqf Act is extracted hereunder:

“[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.]”

6. The present case was registered for the offences under Sections 420 and 406 r/w 34 IPC. The Chandrayanagutta police has jurisdiction to investigate into the offence of criminal misappropriation and cheating punishable under IPC.

7. According to section 52A of the Waqf Act, 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 can be punished. However, for a Court to try the offence under section 52A of the Waqf Act, a complaint has to be filed by any member of the Board who is duly authorized by the State Government. An offence under Section 52A of the Act cannot be investigated by the police.

8. In the present case, charge sheet is not filed under Section 52A of the Waqf Act and the prohibition under Section 52A(3) of the Waqf Act is not applicable. If the acts of a person attract penal consequences under IPC and also

the Waqf Act, it cannot be said that the police are prohibited from investigating into the offences under IPC. None of the provisions of the Waqf Act prohibit launching of prosecution against any person under any other Enactment, when the criminal acts are done against the interests of a Waqf institution. This petitioner and another ceased to be the members of the institution namely Jamia Ilaahiia Nooria and after their termination, they have withdrew the amount from the institution's account illegally.

9. Learned counsel for the petitioner relied upon the judgment of Kerala High Court in the case of **Puthukkodi Aboobacker and others v. Sub Inspector of Police and others**¹, wherein it is held as follows:

“4. What is contemplated under the aforesaid provision is not a police report alleging an offence under Section 52A of the Wakf Act, 1995. A court cannot take cognizance on a police report in the matter. The court can take cognizance of such an offence on a complaint filed by the Wakf Board or any officer duly authorized by the State Government in that behalf only. Therefore, Ext.P6 is of no use at all and the same is nothing but an idle exercise.”

10. There is no dispute with regard to the finding. The said judgment of the Kerala High Court has no application in the

¹ 2015 LawSuit (Ker) 1226

present facts of the case when the petitioner herein and another have misappropriated the institution's money to an extent of Rs.6,15,101/- and they are being prosecuted under provisions of IPC and not under Waqf Act.

11. This case is decided regarding the applicability of the prohibition under section 52A(3) of Waqf Act considering the present allegations. The learned counsel submitted that alternatively, the facts do not reveal commission of either cheating or misappropriation. Since the police has filed evidence regarding the termination of Petitioner and unauthorized withdrawal of money from institution's bank account, it is a case to be decided by trial court by giving an opportunity to both parties.

12. In view of the foregoing discussion, there are no merits in this petition and accordingly, the same is dismissed. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 04.01.2023

Note: L.R copy to be marked.

kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.11919 OF 2022

Date: 04.01.2023.

kvs