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In the court of the Sessions Judge, Pune.

At Pune.

Criminal Revision Application No. 444 / of 2016

Shri Kishor Labhshankar Raval

Alias Swami Prem Anadi

Age 55 years Occ.:- Business

R/At Building No. B-3, Flat No. 11

Meeranagar Park, Lane No. 7

Koregaon Park Pune 411001

Mobile:- 9423505093

Email: <anandi.raval@gmail.com>

.....Applicant

(Original Complainant).

Vs.

1. The State Of Maharashtra

2. Shri Mukesh Kantilal Sarda

Alias Swami Mukesh Bharti

Age About 65yrs.; Occu: Business

R/At OSHO COMMUNE INTERNATIONAL

50, Koregaon Park Pune 411001

Mobile:- 9820101930

3. Shri Devendra Singh Dewal

Alias Swami Devendra

Age about 60 yrs.; occu: business

R/at OSHO COMMUNE INTERNATIONAL

50, Koregaon Park Pune 411001

Mobile: 9890177767

4. Shri Anand Kumar Avasthi
Alias Swami Anand Satyarthi
Age about 58yrs.; occu: business
R/at OSHO COMMUNE INTERNATIONAL
50, Koregaon Park Pune 411001
Mobile: 9823042365

5. Ms. Vidya Khubchandani
Alias Ma Vidya Bharti
Age about 58 yrs.; occup: business
R/at OSHO COMMUNE INTERNATIONAL
50, Koregaon Park Pune 411001
Mobile: 9850122124

6. Shri Lal Pratap Singh
Alias Swami Yog Pratap
Age about 70 yrs.; occup: business
R/at OSHO COMMUNE INTERNATIONAL
50, Koregaon Park Pune 411001
Mobile:

7. Mrs. Sadhna Belapurkar
Alias Ma Amrit Sadhna
Age about 65 yrs.; occup: business
R/at OSHO COMMUNE INTERNATIONAL
50, Koregaon Park Pune 411001
Mobile: 9822027153

8. Shri Bimal R. Desai
Age – Adult, Occupation:- Chartered Accountant
Office Address:- M/S Chhotalal H. Shah
Damodar Mansion 1st Floor
15, A. K. Naik Marg
Fort, Mumbai 400001

9. Shri Ketan S. Patel
Age:- Adult Occup:- Chartered Accountant
Office Address:- M/S Chhotalal H. Shah

Damodar Mansion 1st Floor,
15 A. K. Naik Marg
Fort, Mumbai 400001

----- **Opponents**
(nos. 2 to 7 original accused)

Revision under section 397 of Criminal procedure code

This Memorandum of Revision of the Applicant/ Criminal Complainant above named most respectfully begs to state as follows:-

1. That the applicant had filed a private Complaint/Application against the Opponent Nos. - 2 to 7 for the offences punishable under sections 406,409,120-B r/w 34 of the Indian penal code in the court of learned J.M.F.C No.3 at Pune, seeking an order to direct the police of Koregaon park police station to conduct the investigation as provided under section 156 (3) of Cr.PC. The said case was registered as criminal M.A. No. 3977/2016. In respect to the said M. A. 3977/2016, an Order passed by the Learned Magistrate is enclosed herewith. **Annexure 1**
2. **The facts in the brief are:** - That Osho International Foundation is a registered public charitable trust bearing registration No. F-14570 (M). The said Osho International Foundation is the owner of Osho Guest House also known as Osho Dharmshala which is situated on plot No. 9 of Koregaon road. There are about 30 rooms in said guest house which was constructed with the object of providing accommodation facility to the devotees of Osho. The occupiers of the said rooms are required to pay charges for the same on per day basis. The rooms are double rooms on twin sharing basis. The estimated gross income for the said 30 rooms, amounts to about Rs. 1,25,000/- per day i.e. Rs. 4,56,25000/- per year.

That, the opponents Nos. 2 to 7 who are present and past trustees of Osho International foundation have dishonestly and fraudulently misappropriated the income received from the said

Osho Dharmshala for their own use and have deposited the same in the account of Osho Multi Media & Resort Private Limited". The said accused No. 2-7 who are past and present Trustees of the Trust with such dishonest intension floated one company in the name of "Osho Multi Media & Resort Private Limited" wherein trustees of the trusts are Directors and Share Holders who have illegally siphoned off the income rightfully due to Osho International Foundation in the account of the said Osho Multi Media and Resorts Pvt. Ltd. The Schedule I issued by the office of the Charity Commissioner Mumbai and Search report of Osho Multimedia and Resorts Pvt. Ltd. is enclosed with the Original Complaint filed before Hon'ble JMFC No. 3 which is also enclosed herewith.

The Accused No. 2-7 are past & present trustees of Osho International Foundation & also the Directors and/or share holders in Osho Multi Media Resorts and, in this dual capacity committed offences u/s 406,409,420,120-B, 34 of the I.P.C. They have misappropriated huge public funds to the tune of Rs. 70 Crores and more from the year 2005 to 2015. The figures of amount misappropriated for the years 2002 to 2004 are not available but can be traced during the police investigation. The facts and modus operandi used by the accused are mentioned in the complaint before Hon'ble JMFC No.3.

3. That the learned Magistrate by his order dated 14-09-2106 rejected the prayer for directing investigation under section 156 (3) of Cr. P.C.

Being aggrieved by the aforesaid order rejecting prayer for directing investigation u/s 156(3) Cr. PC, the Applicant/Complainant approaches this Hon'ble Court in revision & sets forth the following amongst other grounds against the same.

- i). That the order of rejecting prayer for directing investigation by police is neither legal nor tenable in law.
- ii). That the order passed by the learned Magistrate is cryptic and passed without application of judicial mind.

iii). That the learned Magistrate has observed that the applicant/complainant has also made An Application to the charity commissioner under section 41 E of the Bombay Public Trust Act, but surprisingly the learned Magistrate has NOT EVEN FOR A SINGLE TIME stated in the said impugned order as to how it is relevant to reject the prayer for investigation sought by the Complainant u/s 156(3) Cr. P.C.

4. That the Learned Magistrate failed to see that the Application to Hon'ble Charity Commissioner, Mumbai which is filed by the Complainant along with another Mr. Yogesh Thakkar bearing No. 5/2012 is u/s 41 E of the Maharashtra Public Trust Act; which is having a limited scope and provisions for the protection of the Properties and Charities of the Trust. The said 41 E Application is an independent proceeding and does not operate as a bar to to grant suitable Orders for investigating the concurrent crimes as reported by the Applicant u/s 156(3) Cr. P.C.

The Applicant submits that in the said impugned Order, the learned Magistrate himself is just merely **Mentioning** a fact that the said Application is filed before the Charity Commissioner Office. However, he has not clarified for HOW and WHY the said Application to Hon'ble Charity Commissioner is a bar to filing of complaint. Then why the learned Magistrate did mentioned the same in his impugned order.

The Applicant respectfully submits that the purpose of the Maharashtra Public Trust Act as shown by the preamble is to make better provision for the administration of public religious and charitable. However, when trustees of the public charitable trust are found committing a Criminal Offence does not come under the provisions of the said Public Trust Act and jurisdiction of the Hon'ble Charity Commissioner.

5. That the learned Magistrate also observed and noted in the said impugned Order that the Complaint/Application is not supported by An Affidavit which is pronounced by him as 'Mandatory'. The Applicant respectfully submits that there is no provision in the Cr.P.C . which states that the Application u/s 156(3) Cr.PC must be supported by An Affidavit.

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6. That the learned Magistrate totally failed to note that his aforesaid ground for rejection of investigation defective and illegal because actually, the order u/s 156(3) needs to be passed at *Pre Cognizance* stage that is before recording verification of complainant. It is submitted that once verification i.e. statement on oath is recorded, then the Magistrate cannot pass an order u/s 156 (3) Cr.P.C. code.

Affidavit

7. That the learned Magistrate grossly erred in failing to note that an affidavit is a statement on oath which cannot be taken into consideration while passing an order u/s 156 (3) of Cr.P.C code.

The purpose of filling Complaint for investigation is to stop illegal activities in the State such as in this case, stop laundering of public funds in the personal kitty of the trustees. By rejecting an investigation, the effectiveness of the law and order protecting the properties and funds of the public trusts is thus frustrated in the said impugned Order of the Learned Magistrate.

8. That the learned Magistrate also failed to note that An Affidavit is evidence and should not be taken into consideration and that the Magistrate cannot pass an order u/s 156 (3) Cr.PC. code after taking cognizance of the offence.

9. That even if the affidavit was mandatory (which is not) still the learned Magistrate ought not to have rejected the prayer outright but ought to have fixed the case for filing of such affidavit in the interest of justice.

10. That the learned Magistrate totally ignored the facts of the case that huge amounts more than 70 Crores was misappropriated which is public fund and which is adding up on daily basis.

That the Learned Magistrate totally ignored the facts of the clinching evidence of Receipts evidencing that Osho Multimedia and Resorts Pvt. Ltd. is receiving Income of the Trust wherein trustees are the Directors and Share Holders.

Also the Learned Magistrate totally ignored the facts of the clinching evidence of Cash Receipts evidencing the Service Tax number mentioned as AAACZ1374RST001 on the bills identifies that Osho Multimedia and Resorts Pvt. Ltd. as beneficiaries of the Cash Income of Trust Funds.

Also the Learned Magistrate totally failed to capture that **the amount of Rs.70 Crores being transferred by the Opponents is just a "Tip of an Iceberg."** The Learned Magistrate also failed to take other appropriate steps in interests of the justice which would enable further investigations into deeper layers of this crime.

11. The learned Magistrate also failed to note that the accused are continuing to commit the offence on daily basis till date.

12. That the learned Magistrate also failed to appreciate the grounds mentioned in the complaint/application setting out as to why the police investigation is necessary. That it is significant to note that the learned Magistrate has observed total silence about the same.

13. That the order of the learned Magistrate is thus perverse and liable to be set aside.

14. That it appears that the learned Magistrate was in a haste to reject the prayer for police investigation.

15. That when the applicant/complainant specifically averred that police investigation is necessary, still the learned Magistrate posted the matter for recording of verification.

16. That the learned Magistrate in a hurry passed the said order mechanically.

That learned Magistrate is totally silent for the involvement of the Accused No. 8 and 9 who are Chartered Accountants for the Trustees of Osho International Foundation and Directors as well as Share Holders of Osho Multimedia and Resorts Pvt. Ltd. The said Accused NO. 8 and 9 Chartered Accountants of M/S Chhotalal Shah and Associates have favored the Accused No. 2- 7 for hiding facts in their reports by saying that Trustees have not transferred funds and properties of the trust for their

private use. Further, Accused No. 8 and 9 knowing that such transfer of funds from the Trust to the Private Company is illegal, still in their reports this facts have been concealed by them.

Thus, the learned Magistrate completely overlooked this fact of the said audit reports and have choose to remain silent that Public Funds and Properties of the trust are siphoned and alienated by Accused hand in hand in conspiracy. The evidence of the same is enclosed herewith and marked as **Annexure -2**

17. That as the Accused has no locus standi till issue of process, the notice of present revision may not be issued to Opponent Nos. 2 to 9 as they are cited as formal opponents.

18. That the applicant relies on the case reported in 2008 Cri: L.J. 3761, the same is enclosed herewith marked as **Annexure 3**, which states that

- I. It should not be normally open to the accused to say before the Revisional or High Court that the allegation about a cognizable offence should not even be investigated.
- II. Once Magistrate perused complaint with view to apply his judicial mind & proceeded to record verified statement of complainant it amounts to "taking of cognizance" & exercise of powers thereafter u/s 156 (3) is not permissible.

Thus the observation of learned Magistrate that affidavit in support of complaint is not filed in perverse.

19. That the applicant also relies on the Case Law as reported in "2010 (1) B crc 229 (Rajasthan High Court) the same is enclosed herewith marked as **Annexure 4**, in which it is held that," Pre judging the issue of investigation while exercising powers u/s 156 (3) of code would be impermissible – declining to pass an order.

It is observed in para 24 "Where the Magistrate is of the view that matter does not require any investigation and he would inquire himself then it would amount to prejudging the issue of

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investigation. If in an application under section 156(3), Cr. P.C, an aggrieved person does not want the Magistrate to take cognizance of an offence and inquire into the matter himself then by declining to pass an order to, the police to register an FIR and investigation, would rather cause injustice to the victim. Sometimes, it may be difficult for the complainant to prosecute. The complainant may not be able to lead evidence because of a number of reasons, socially or otherwise and he would not be able to bring the witnesses to the court. In such case, the complainant may not be able to establish his case. Therefore, an incorrect approach by a Magistrate may lead to miscarriage of justice”.

20. That the impugned Order Cr. M.A. No. 3977/2016 was passed on 14/09/2016 and therefore the revision is filed within limitation.

21. The Applicant therefore prays that:

- a) The record and proceedings of Cr. M. A. No. 3977/2016 pending in the court of J.M.F.C. No.3 may be called and after perusing the same the order of rejecting prayer for directing investigation u/s 156(3) Cr. P.C. be quashed and set aside and
- b) To pass an order directing investigation u/s 156(3) Cr. P. code by the Officer In charge of Koregaon Park Police Station.
- c) Such other orders as may be deemed necessary in the interest of justice may be passed.

For which act of kindness the applicant as in duty bound shall ever pray.

Pune

Dt. 24.10.2016

Applicant.

Annexures:

1. M. A. 3977/2016 along with Order and Police Complaint filed on dated 04.04.2016 1 to 32
2. The audited reports issued by accused No. 8 and 9. 33 to 91
3. Case Law reported in 2008 Cri: L.J. 3761 92 to 94
4. Case Law as reported in "2010 (1) B crc 229 (Rajasthan High Court) 95 to 101.