

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE**

**VIJAY KUMAR SHUKLA**

**ON THE 9<sup>th</sup> FEBRUARY 2023**

**MISC. CRIMINAL CASE No. 56504 of 2021**

**BETWEEN:-**

1. ANOOP MISHRA S/O

2. SHOBHA MISHRA W/O

3. ASHWINI MISHRA S/O

**.....APPLICANTS**

***(BY SHRI L.S.CHANDIRAMANI-ADVOCATE)***

**AND**

1. AKLA DUBEY W/O

2. DEEP DIXIT S/O
  
3. SANDEEP SHRIVASTAV S/O
  
4. STATE OF M.P. THROUGH P.S. SIMROL TEHSIL MHOW,  
INDORE (MADHYA PRADESH)

**.....RESPONDENTS**

*(SHRI AJAY BAGADIA- SENIOR COUNSEL WITH SHRI GAJENDRA SINGH  
CHOUHAN, COUNSEL FOR RESPONDENT NOS.1 TO 3)*

*(SMT. MAMTA SHANDILYA-G.A. FOR RESPONDENT NO.4)*

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*This petition coming on for orders this day, the court passed the following :*

**ORDER**

The present petition is filed under section 482 Cr.P.C. for quashing the complaint filed by the respondents before the JMFC, Mhow whereby the cognizance of the complaint has been taken and warrant of arrest has been issued against applicant Nos.1 to 3.

2. The applicants are seeking for quashment of the complaint, cognizance and issuance of arrest warrant and proceedings registered by court of JMFC, Mhow dated 1.10.2021 against the applicants under sections 405, 415, 420, 463, 464, 467 and 120-B of the IPC.

3. Facts adumbrated in nutshell are that applicants and private respondents are member of Swami Vivekanand Takniki Sanstha (hereinafter referred as Institute) which is a registered society under the

society Registrarian Adhiniyam, 1973. Since 2001, the respondents Smt. Alka Dubey W/o Suresh Dubey was Secretary of Society till its inception since 2016. Respondent-Deep Dixit was Joint secretary and another respondent-Sandeep Shrivastava was Executive Member of the society for a long time. According to the applicants, these persons along with Alka Dubey were conducting the affairs of the society as other members did not reside in Indore. The Institute and registered office of the society happened to be in Indore for many years until recently when registered office of the society was changed.

4. A complaint has been filed by the respondents alleging financial irregularities purported to have been committed by the present applicants in relation with Swami Vivekanand Institute. It is alleged that applicants were having charge of Swami Vivekanand Society and have jointly committed fraud by withdrawing Rs.74,07,606/- from the account of the society for their personal use and illegally transferred a sum of Rs.35 Lacs in the account of IPS College, Gwalior. Secondly, applicants have prepared and fabricated minutes of the meeting dated 13.5.2019 and 28.5.2019 wherein forged signature of the complainant were made illegally and fraudulently got power to operate bank account of the society and thereby committed embezzlement of the funds of the society.

5. Counsel for the applicants vehemently argued that complaint filed by the respondents is not maintainable in view of provisions of section 18, 32 and 37(2) of M.P. Society Registrarian Adhiniyam 1973 which is a special Act especially formulated to deal with some eventuality. It is also submitted that in earlier round of litigation, one Writ Petition No. 3513/2020 was filed before this Court seeking a direction to the respondents for redressal before the Registrar under

section 32 of M.P. Society Registrickaran Adhiniyam, 1973. The said order was affirmed by the Division Bench in Writ Appeal No. 825/2020.

6. Per contra, counsel for the respondents submitted that in view of provisions of section 18, 32 and 37 of the Act, there is no bar for the competent court of law to take cognizance of offence under the IPC. It is further submitted that the order passed by Single Judge in Writ Petition No. 3513/2020 holding that complainant Alka Dubey could not have been represented the Society and the petition at her behest is not maintainable was challenged before the Division Bench in Writ Appeal No. 825/2020. The aforesaid findings were set aside by the Division Bench in paragraph-7 of the order.

7. The short question arises for consideration in the present case is that whether the complaint filed by the private respondent is liable to be dismissed as not maintainable in view of the provisions of section 18,32 and 37(2) of the Adhiniyam 1973.

8. I have heard learned counsel for the parties and after appreciating the aforesaid contention, it is apposite to refer the provisions of section 18, 32 and 37 of the Adhiniyam, 1973 :-

Sec. 18. Members guilty of offences punishable as strangers –

Any member of Society, who shall steal, purloin or embezzle any money or other property, of such society, or shall forge any deed, bound, security for money receipt, or other instrument, whereby the funds of the society may be exposed to loss shall be subject to the same prosecution, and if convicted shall be liable to be punished in like manner as any person other than a member would be subject and liable to in respect of the like offence.

Sec. 32. Enquiry and settlement of disputes –

(1) The Registrar may, on his own motion or on an application made under sub-section (2) either by himself or by a person authorised by him, by order in writing, hold an enquiry into the constitution, working and financial conditions of a society.

(2) An enquiry of the nature referred to in sub-section (1) shall be held on (the application together with an affidavit in support of its contents) of-

(a) a majority of the members of the governing body of the society; or  
 (b) not less than one-third of the total number of members of the society.

(3) The registrar or the person authorised by him under sub- section (1) shall for the purpose of an enquiry under this section have the following powers, namely :-

(a) he shall at all times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of the society and may summon any person in possession, or responsible for the custody of any such books, accounts, documents , securities, cash or other properties to produce the same, if they relate to the head office of the society at any place at the head-quarter thereof and if they relate to any branch of the society, at any place in the town wherein such branch thereof is located or in his own office;

(b) he may summon any person whom he has reason to believe has knowledge of any of the affairs of the society to appear before him at any place at the head-quarters of the society or the society or any branch thereof or in his own office and may examine such person on oath; and

(c) (i) he may notwithstanding any regulation or byelaw specifying the period of notice for a generally meeting of the society, require the officers of society to call a general meeting of the society at such time at the head office of the society or at any place at the head quarter of the society and do determine such matters as may be directed by him and where the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself .

(ii) any meeting called under sub-clause (1) shall have all the powers of a general meeting called under the regulations or byelaws of the society and its proceedings shall be regulated by such byelaws.

2 [(4) When an enquiry is made under this section the Registrar shall communicate the result of the enquiry to the society and may issue appropriate directions to the society, which shall be binding on all parties concerned.]

### Sec. 37. Cognizance of offence –

(1) No Court inferior to that of a Magistrate of the First class shall try an offence punishable under this Act.

(2) No Court shall take cognizance of an offence punishable under this Act except upon complaint made by the Registrar or any other person, authorised in writing by him, in this behalf.

9. A harmonious reading of aforesaid provisions, it is clear that the Registrar has been conferred powers on his own motion or on an application made under sub-section(2) either by himself or by a person authorized by him, by order in writing, hold an enquiry into the constitution, working and financial conditions of a society. Thus, the power of the Registrar to make an enquiry is confined to the

constitution, working and financial conditions of the society. The scope of enquiry is limited to the said extent of constitution, working and financial conditions of the society. Chapter-IX deals with offences and penalties. In section 38, penalty is prescribed for non-compliance of section 27 or making false entry which has been held to be punishable with fine of Rs.500/- or in case of continuing breach, shall also be punishable with fine not exceeding fifty rupees for each day during the period the breach continues after first conviction for such offence. Section 39 provides penalty for contravention of section 28 and 31 of the Act. Section 28 deals with the audit and inspection and section 31 deals with the power of Registrar to call for information. Section 18 provides for members guilty of offences punishable as strangers. On going through the provisions of section 18, it is evident that any member of the society who is found to have involved in steal, purloin or embezzle any money or other property, or willfully or maliciously destroy or injure any property of such society, or shall forge any deed, bound security for money receipt, or other instrument, whereby the funds of the society may be, exposed to loss shall be subject to the same prosecution, and if convicted shall be liable to be punished in the like manner as any person other than a member would be subject and liable to in respect of the like offences. The provisions of section 37 provides for cognizance of offence that no Court inferior to that of a Magistrate of the First Class shall try an offence punishable under this Act, and no Court shall take cognizance of an offence punishable under this Act except upon complaint made by the Registrar or any other person, authorized in writing by him, in this behalf.

10. The M.P. Society Registrarian Adhiniyam has been enacted with an object to consolidate and amend the law relating to registration of

literary, scientific, educational, religious, charitable or other societies in M.P.. The power of the Registrar under section 27 and 32 for making an enquiry and settlement of dispute is confined only to constitution, working and financial condition of the society. The provision of section 37 is included in Chapter-IX which deals with offences and penalties. The bar under subsection (1) is that- no Court inferior to that of a Magistrate of the First Class shall try an offence punishable **under this Act**. The emphasis has to be laid on the word ‘under this Act’, means the offences which are punishable under the M.P. Society Registrarian Adhiniyam, 1973 and not under the general law of IPC or any other Act. The provisions of subsection (2) of Section 37 further makes clear that no Court shall take cognizance of an offence punishable under this Act, except upon a complaint made by the Registrar or any other person authorised in writing in this behalf. Thus, if both the provisions of subsection (1) and subsection (2) of Section 37 are read together, it is evident that bar is only in respect of the offence under the Act which are mentioned in Chapter-IX of the Adhiniyam, 1973 and not under the IPC or any other law. Thus, on harmonious construction of various provisions of Adhiniyam, 1973, it is evident that provision of taking cognizance of offence by a Court not inferior to the Court of JMFC is confined to an offence punishable under this Act and not the offence punishable under the IPC or any other law.

11. In the present case the allegation against the present applicants are committing fraud by withdrawing Rs.74,07,606/- from the account of the Society for their personal use and illegally transferring amount of Rs.35 Lacs in the account of IPS College, Gwalior. It is further alleged that applicants have prepared false and fabricated minutes of the meeting dated 13.5.2019 and 28.5.2019, wherein forged signatures of

the complainant were made illegally and fraudulently. Thus, there are serious allegations against the applicants for commission of offence punishable under the IPC, and therefore, contention of applicants cannot be accepted that complaint is not maintainable in view of bar under section 37 of the Adhiniyam, 1973. Apart from that, it is not in dispute that the charges have already been framed by the trial court.

In view of aforesaid, I do not find any substance in the petition.

M.Cr.C. is accordingly dismissed.

(VIJAY KUMAR SHUKLA)  
JUDGE

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