

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 691 OF 2019

Shri. Namdev Sahebrao Garad
Age 52 years, Occu. Social Worker
and Agri., R/o. At post Mohote,
Tq. Pathardi, Dist. Ahmednagar.

....Petitioner.

Versus

1. The State of Maharashtra
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Inspector General of Police
Police Mukhyalaya,
Mumbai.
3. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar.
4. The Police Inspector,
Pathardi Police Station,
Pathardi, Tal. Pathardi,
Dist. Ahmednagar.
5. Shri. Jagadamba Devi Sarvajanik Trust,
Mohote, Taluka Pathardi,
Dist. Ahmednagar.
(Through its Chief Executive Officer)

....Respondents.

Mr. A.S. Kale h/f. Mr. Talekar and Associates, Advocate for petitioner.

Mr. M.M. Nerlikar, APP for respondent Nos. 1 to 4.

Mr. Rajendra S. Deshmukh, Senior Counsel for respondent No. 5.

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ.**

RESERVED ON : 15/01/2021

PRONOUNCED ON : 03/02/2021

JUDGMENT : [PER T.V. NALAWADE, J.]

- 1) Rule. Rule made returnable forthwith. By consent, heard

both the sides for final disposal.

2) Following reliefs are claimed in the present proceeding :-

"A) To call entire record of accounts and audits of the respondent trust from 2009-2019 including details of precious metals collected and procedure undertaken on it and permit copy of the same to the petitioner;

B) To direct the respondents to register FIR against the persons involved in commission of crime in light of complaint made by the petitioner, by issuing a writ of mandamus, or any other appropriate writ, order or direction as the case may be;

C) To supervise and monitor the investigation in respect of alleged complaints, by invoking its inherent and plenary powers;

D) To direct the Central Bureau of Intelligence to conduct preliminary inquiry and call for original records from the trust, pending hearing and final disposal of this petition;

E) To direct the respondents to excavate and dig out the alleged enchanted gold hidden under the statue of goddesses of the temple to re-energise the temple and deity, to verify the purity of the gold for the purpose of police investigation, pending hearing and final disposal of the petition;

F) To grant any other relief to which the petitioners are entitled to."

3) The petitioner was trustee for some time of *Jagdamba Devi Sarvajanik Trust* and temple of this Goddess is situated at

Mohote, District Ahmednagar. It is his contention that he wants aforesaid reliefs as he is citizen of India and he is resident of Mohote where the present property is situated.

4) It is contention of the petitioner that during the year 2011 and afterwards some illegal acts were committed by the trustees of aforesaid trust and they involve burying of around 2 k.g. of gold in the name of *Yantras* and showing additional expenditure of Rs.25 lakh for doing ceremonies in respect of so called *Yantras*. It is submitted that there is clear probability that by showing that *Yantras* weighing 2 k.g. of gold were buried, the gold and aforesaid amount was misappropriated and so, these acts of the trustees need to be investigated by the police. He has mentioned the names of the persons who were shown as engaged for creation and burial of the so called *Yantras* in the petition and it is contended that the selection process of the said person was also not proper and that also creates probability that everything was pre-decided and accordingly, aforesaid illegal activity is done by the trustees. It is submitted that though judicial officer of the rank of District Judge acts as a Chairman of the trust, the aforesaid activities were done and the trustees prepared false documents even when judicial officer of aforesaid rank is involved in the management. It is contended that in the past also person who was working as Project Officer had committed illegal activities and in the year 2010 inquiry was made against that Project

Officer and the same Project Officer continued to work as Chief Executive Officer (hereinafter referred to as 'C.E.O.' for short) of the trust and this circumstance creates a probability that from many years such illegal activities of the trust are going on. It is contended that even the auditor appointed to do the audit was not eligible and he was not possessing requisite qualification for conducting audit and it also shows that everything was pre-planned.

5) In the petition, other allegations are made in respect of other irregularities like not showing the account in respect of live stock given as donation, the development of forest land and spending amount under other heads without calling tenders etc. Though these allegations are there, during arguments the learned counsel for petitioner submitted that he is pressing for relief of registration of crime and that too, in respect of the so called burial of 2 k.g. of gold and showing expenditure of Rs.25 lakh for so called religious ceremonies performed for preparation and burial of *Yantras* prepared from gold.

6) Along with the petition, a copy of scheme of aforesaid trust is produced and on that basis, it was submitted that the trust was created not only for religious objects, but for social objects and educational objects. It is submitted that the religious objects involved only *Pooja Archana* of the deity and to celebrate *Utsavas*

and functions and that object does not involved burial of gold in the name of *Yantras*. It is contended that instead of utilizing the income of the endowment for the purposes given in the scheme and making an attempt of upliftment of poor and needy persons and for providing amenities to the devotees, the aforesaid illegal activity was done and that was not permissible under the scheme. It is submitted that due to aforesaid illegal activities star question was raised in State Legislative Assembly and inquiry was also directed, but a farce was created of the inquiry and nobody like the trustees cooperated in the inquiry and no action was taken even when complaints were made by the petitioner and others in respect of the illegal activities. Some record in respect of star question is produced and that includes a communication made to the trust office by the Government and then by Charity Commissioner to Deputy Charity Commissioner, Ahmednagar. Surprisingly, the administrative staff like Inspector and Incharge Superintendent submitted some report, but it did not touch the contention that the aforesaid acts could not have been done as the scheme did not permit such activity. It can be said that whatever was informed by the trustees was accepted by the administrative staff and the inquiry was not made personally by the Deputy Charity Commissioner. No order in such inquiry is made by the learned Deputy Charity Commissioner.

7) The record is produced to show that specific complaint

was made to police by *Andhashradha Nirmulan Committee* (hereinafter referred to as 'ANIS' for short) for requesting to take action in respect of aforesaid illegal activity and copy of that complaint is produced on record. It appears that no action was taken by police on that complaint also.

8) For the trust, reply affidavit is filed through respondent No. 5, C.E.O. against whom there is a grievance of aforesaid nature and huge record is produced to justify the aforesaid acts done. The main contention of the respondent is that P.I.L. No. 41/2014 is filed on civil side by one Babasaheb Dahifale and in that P.I.L. filed on 28.3.2014 prayer was made to constitute Special Investigation Team under the chairmanship of retired High Court Judge and the inquiry be made into the activities of the trustees which include making inquiry into the illegal activity of the trustees mentioned in the petition and the management be dissolved for formation of new scheme for proper management of function of endowment and to take criminal actions also for cognizable offences. By way of interim relief, the relief of injunction was claimed to prevent the *Pratishthan of Yoginimurti (Suvarna Yantra)*, fixing of *Suvarna Kalash* in the temple premises. It is contended that in view of the nature of reliefs claimed in the P.I.L. and as no direction was given in the P.I.L., this Court is not expected to give directions as claimed in the present proceeding.

9) It is the contention of the respondent that petitioner has been filing many complaints from 30.7.2015 and all these complaints were considered by the management and they came to be rejected. It is contended that one inquiry was made under section 41-B of Maharashtra Public Trust Act, but nothing revealed in the inquiry. It is contended that the petitioner was trustee for some time and as he is not in the management, he is giving false complaints to pressurize the present management.

10) It is specifically contended in the reply affidavit that in the meeting dated 12.9.2010 decision was taken for renovation of temple and use of 91 *Suvarna Yantras* which were to be founded below statutes of various Gods and Goddess. It is contended that by passing resolution gold weighing 1890 grams was made available by the trustees and it was given to one Pandit Pradip Jadhav, resident of Solapur for preparation of *Yantras* and the amount of Rs.24,55,000/- was approved as material and labour charges for preparation of *Yantras* and for performing the religious rituals.

11) It is contended that after receipt of complaints in respect of this activity one committee was constituted by the management and 15 *Yantras* out of 91 *Yantras* were inspected through gold valuer Shri. Soni before burial. These *Yantras* were buried between 2011

and 2016. It is contended that in the year 2018 during change of flooring of platform of temple of Goddess Jagdamba, one such *Yantra* was recovered and it is kept in safe custody. It is contended that most of the *Yantras* were buried after the religious function and atleast 14 *Yantras* were buried in the presence of some villagers in the year 2016. It is contended that before handing over the gold, it was tested to ascertain that it was a pure gold and that was done through Indian Government Mint (I.G.M.).

12) It is the contention in the reply that the trustees had given authority to C.E.O. and District Judge to sign cheques and accordingly, the disbursement of the amount was made. The deponent was working as C.E.O. even in the past and he has denied that he was found guilty in previous inquiry. It is his contention that he was again appointed as C.E.O. after following due procedure.

13) This Court has gone through the record of inquiry made by clerical staff of the office of Deputy Charity Commissioner. Here only it needs to be mentioned that the learned Deputy Charity Commissioner has not passed any order which is expected after making an inquiry and so, it can be said that the learned Deputy Charity Commissioner has not made inquiry into the matter. Similarly, even after receipt of the complaint in respect of cognizable offence from ANIS, police have not taken action like registration of

the crime and nothing was informed to ANIS about the decision of the police in the matter. ANIS is allowed to intervene in the present matter and the learned counsel appointed by ANIS insisted that the crime needs to be registered. On the basis of the record, which was created by clerical staff of the office of Deputy Charity Commissioner and the record of so called inquiry prepared by police in to the matter, it can be said that the authorities have avoided to take decision in the matter. The sum and substance of the contentions is already mentioned and this Court is hereinafter mentioning it's findings on some points which are for *prima facie* purpose, for the purpose of registration of the crime and they are as follows :-

- (i) The scheme of trust does not permit the disposal of the property in the manner in which it is disposed of. The scheme does not permit the burial of the gold in the name of *Yantras* and making of the ceremonies for burial of *Yantras*. The scheme also does not permit creation of the new temple for 64 *Yoginis*. The scheme shows that if the amount to be spent is more than Rs.20,000/-, in ordinary course, tender needs to be invited and then the work can be given. Thus, the expenditure shown to be made is not permissible under the scheme. It is a fact that the trust lost the property of more than Rs. One crore in the alleged activity of creation of *Yantras* and burial of *Yantras*. This activity was going on from 2011 to 2016, the period during

which even the petitioner was a trustee when the first resolution was passed.

(ii) Under the Maharashtra Public Trust Act, procedure is given for disposal of the property of the trust which involves taking permission of Joint Charity Commissioner. After taking permission, further procedure like calling tenders for such work is also there. In the present matter, there is nothing on the record to show that for particular reason, it was not possible to call tender. It is surprising that only one man "Shri. Jadhav" was proposed by architect Shri. Shinde and he was accepted by all the trustees for this work. The work was given without verification of competency of Shri. Jadhav in this field.

(iii) The person "Jadhav" selected for the work could not give the names of the shops from where the precious material allegedly used for *Pooja* was purchased. He has given value of the material and cost of some items was more than Rs.2,000/- per gram. There is no base for such cost and these things cannot be proved practically. Further, there is discrepancy in the information given about the actual use of the material and the amount shown to be spent for purchase of that material. These things need to

be kept in mind as everything was shown to be entrusted to “Shri. Jadhav.”

(iv) There is no record to show as to how pure gold weighing 2 k.g. was utilized. It is the contention of the trust that when gold ornaments are received in donation, they are sent to Government mint for purification and the purified gold is stored in the office of trust. Ordinarily for preparation of any ornament like *Pendant* which can be called as *Yantra*, pure gold cannot be used and some metal needs to be mixed in pure gold to make it firm. There is no record of following such procedure. Further, when the gold is supplied for preparation of such items, ordinarily sheets of this metal are required to be prepared and those sheets then can be used for preparation of *Yantras*. Jadhav could not have done this at his residential place. Thus, the record needs to be collected to ascertain as to whether such sheets were prepared at particular place where machinery is fixed. Further for preparing 64 *Yantras* of *Yoginis* separate 64 moulds were required to be created. These are peculiar *Yantras* and moulds are not readily available and they need to be prepared. There is no record to show that such moulds were really created through any agency and moulds were taken over by the trust. Though some photographs

are produced to show that some persons witnessed burial of few *Yantras*, that can be a farce as more than 90 *Yantras* were to be buried and before burial, the purity of *Yantras* for gold ought to have been checked for aforesaid purpose and then the burial could have taken place. The record shows that two *Yantras* are shown to be recovered, but possibility that such circumstance is created to show that the aforesaid exercise was really done, cannot be ruled out at this stage. The absence of record of aforesaid nature has created probability that all this exercise shown in the resolution and the correspondence made by trust is false. The creation of complex to fix 64 *Yogini's Yantras*, statues appear to be part of aforesaid *modus operandi*. Creation of 64 such Goddesses gave room for creating 64 *Suvarna Yantras*. For creation of that structure also apparently no procedure was followed. The religious point in this context is being discussed afterwards.

(v) It is a fact that the trust lost the property worth more than Rs. One Crore during aforesaid period and the disposal of the property was apparently illegal. This act of the trustees cannot be called as only irregularity. The circumstances are sufficient to make out the case of breach of trust for the present purpose. These activities apparently

fall under the offences punishable under sections 420, 406 etc. of I.P.C. It is also cheating to the poor people who had donated the ornaments to the endowment for purposes mentioned in the scheme of the trust.

14) The object behind the Maharashtra Public Trust Act shows that it was to prevent and stop the prevailing abuses, malpractices and defects in the administration of such trust and endowment. The object was also to take measures necessary for removing such abuses, malpractices and defects. The object was also to take steps for effective supervision, regulation and control of the administration and management of the endowment. The object was also to see that there is more beneficial use and application of the property and funds of such trusts and endowments and the object was to create suitable machinery for carrying out aforesaid objects. The Act came to be amended from time to time to make better provisions for administration of public, religious trusts. The powers of supervision, inspection and action of the office of Charity Commissioner are given in Chapter VI and this Court has already observed that the office of Deputy Charity Commissioner failed to take action in the matter. The penalty provided for contravention of the provisions of the Trust Act are there in Chapter X, but in view of the peculiar circumstances of the case, it can be said that more serious offences are apparently committed and the provisions of I.P.C. and other special Enactments

mentioned can be safely used. In this Act, restrictions are given on the powers of the trustees, particularly, the powers to dispose of the property of the public trust. In case like present one, the acts done in breach of the provisions cannot be ignored by saying that it is irregularity and Joint Charity Commissioner could have granted permission *ex-post-facto*.

15) The provisions of the Trust Act show that the trustees need to take practical approach and they are bound by the provisions of the Trust Act. The trustees may have personal beliefs but their personal beliefs cannot be used in the management of the trust. The person who is in management cannot be allowed to spend or dispose of the property in the manner done in the present matter for achieving something which cannot be scientifically proved. Further, the devotees come to the temple of such Goddess as they believe in that Goddess. They may not believe in other Goddess or other things like *Yoginis*. The devotees may be even against the *Pooja* of other Goddess and particularly, *Pooja* of *Yoginies*. Most of the Hindu families have separate God or Goddess and particular family believes that only that God or Goddess protects the family. They call it as "*Kul Daivat*". Thus, if there was some personal belief of the trustees, they ought to have done it at the residential place and they ought to have spent amount from their own pocket for such belief. Attempt was made to show the literature in respect of

Yoginies and some literature was used by architect Shinde to convince the trustees for having such structure and for burial of *Suvarna Yantras*. That literature has no base of sacred books of Hindus. It was submitted that in *Puranas*, there is some mention of *Yoginies*. There are few temples of *Yoginies* in India at two to three places. The temples are situated away from the locality showing that in that State also *Yoginies* never lived in populated area if they were in existence. There is no such temple in Maharashtra. There are various stories about *Yoginies* and their *Sadhanas*. Most of the stories tell that they believed in *Tantra Vidya* and they were doing *Sadhana* for achieving *Sidhi* in respect of *Tantra*. This Court is avoiding to quote the stories which are about *Yoginies* and which tell that *Sadhana* for *Tantra Vidya* includes evil and aghori practices. It is sufficient to mention here that in Maharashtra, there is nothing to say that *Yoginies* existed in Maharashtra. On the contrary, Goddess *Mohota Devi* also called as *Jagdamba* was at this place, according to the belief of Hindus. Thus, apparently, there was no need to have the structure of *Yoginies* at this place, but that is shown to be done and these circumstances cannot be ignored by any authority. The various kinds of stories about *Yoginies* also show that promoting the work of *Yoginies* may amount to spreading the superstitions. In view of these circumstances, it cannot be said that the activity of the trustees was in accordance with common religious belief. *Mohota Devi* is treated as *Avatar* of *Adishakti*. *Adishakti* is believed to have all the powers

and *Adishakti* can do anything. This belief also shows that there was no need to create other structures and the creation of other structures of *Yoginies* was not permitted under the trust scheme. It is surprising that even when District Judge was Member of the trust he accepted all the proposals made by Shri. Shinde.

16) In the present trust, two judicial officers work as *ex-officio* members of the trust committee. One judicial officer is of the rank of District Judge and other judicial officer is of the rank of Civil Judge, Junior Division. Civil Judge, Junior Division ordinarily does not object the decision of District Judge for many reasons. They are made members with expectation that the administration of the trust is done properly and no illegal activity is allowed. They are expected to see that the feelings of the devotees do not get hurt and at the same time, they are expected to see that the trust does not promote superstition as spreading superstition is itself offence in Maharashtra. The learned Senior Counsel representing trust submitted that this trust has stopped the practice of animal sacrifice and the people can give donation of the amount which is the value of the animal. This is good thing and as there is legislation to prevent the cruelty to animal, such steps are required to be taken. However, steps like reformation of devotees by telling them that they should not have blind belief are also required from the trust. Thus, atleast the judicial officers are expected to do aforesaid two things and they

are expected to guide the other members of the trust committee. For this endowment, there are donations in the form of money and ornaments. Many poor devotees came to this temple. Such trust can take care of the convenience of the devotees by creating shelter for them during their stay and they can feed them. They can also work for upliftment of poor people of that locality and they can work for development of the area where the temple is situated. When these are expectations from management, these days complaints are received against many managements that they are not properly managing the trust and they are spending the money and they are disposing the property of the trust illegally. In most of the trusts, the manner of collection of donation and offerings is not proper and that gives the opportunity to persons in control to misappropriate the property of trust.

17) For misappropriation of the property of the trust, the trustees used a circumstance that people generally do not interfere in religious affairs of the trust. If anybody objects to the activity, he is condemned by saying that he is hurting religious feelings. Due to increase of such incidents, time has come to teach lesson to such trustees. Such action will prevent activities like the present activity and will also help to check the superstition. The learned Senior Counsel representing the trust placed reliance on observations made by the Apex Court in the case reported as **AIR 1954 SUPREME**

COURT 282 [The Commr., Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt].

In this case, rights of *Mahant* of such religious endowment were considered and discussed. The matters of religion were also considered which involved tenets of religious sects of Hindu which prescribes that offering of food should be given to idol at particular hours of a day and performing particular ceremonies before idol at certain periods of the year. The Apex Court has considered Articles 25 and 26 of Constitution of India and restrictions with respect to matters of religion. It is laid down that in view of Article 26 (d), the law can leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. It is laid down that a law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under this Article. There cannot be dispute over the proposition made by the Apex Court and law laid down by the Apex Court. The matter involved in the case which was before the Hon'ble Apex Court was of different nature and facts of the present matter are altogether different. For the purpose of Articles 25 and 26 of Constitution of India, this Court has already quoted relevant Enactments like Maharashtra Public Trust Act and the scheme prepared for the present endowment under this Act. Those are restrictions given for administration of the trust.

Further, there is one more enactment like the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 [hereinafter referred to as 'Black Magic Act' for short] and those provisions cannot be flouted by anybody. Reliance was also placed by the learned Senior Counsel on observations made by the Apex Court in other case reported as **AIR 1954 SUPREME COURT 388 [Ratilal Panachand Gandhi and Ors. Vs. State of Bombay]**. In that case also, the powers of authority created by the State Act are considered and that way the case is of no help to the trustees who can be made accused in the present matter. In the case reported as **AIR 1959 SUPREME COURT 860 [Sardar Sarup Singh and ors. Vs. State of Punjab and ors.]**, the distinction between clause (d) and clause (e) of Article 26 is discussed and the observations with regard to fundamental rights of management of religious trust are made. The observations are similar to the observations made in the first case cited by the learned Senior Counsel. In respect of the rights of religious denomination, another case was cited which is reported as **AIR 1962 SUPREME COURT 853 [Sardar Syedna Taher Saifuddin Saheb Vs. State of Bombay and Ors.]**. It is laid down that legislation which violates Article 26 (b) is void. There cannot be dispute over this proposition and that proposition is already discussed in the first case which was cited by the learned Senior Counsel representing trustees.

18] The submission made that there is alternate remedy is not acceptable in the present matter for some reasons already given. All the authorities are virtually avoiding to take action and the matters are pending before the authorities for years together.

19) On the other hand, the learned counsel representing the petitioner placed reliance on following cases :-

(i) Judgment delivered by this Court at Principle Seat in Public Interest Litigation No. 6 of 2015 [Surinder Mohan Arora Vs. Maharashtra State Co-operative Bank Ltd. and Ors.] decided on 22.8.2019,

(ii) MANU/SC/1129/2012 [Anju Chaudhary Vs. State of U.P. and Ors.],

(iii) MANU/SC/0162/2011 [Ashok Kukar Todi Vs. Kishwar Jahan and Ors.],

(iv) MANU/SC/0933/2016 [Manoj Kumar Sharma and Ors. Vs. State of Chhattisgarh and Ors.],

(v) AIR 1965 SC 1651 [Anowar Hussain Vs. Ajoy Kumar Mukherjee and ors.]

(vi) (1991) 3 Supreme Court Cases 655 [V. Veeraswami Vs. Union of India and Ors.].

The cases are mainly on the points like power of the Court to give direction to register F.I.R., the scope of inquiry which police can make before registration of the crime. This Court has touched those points also while discussing the factual aspects of the matter.

20) The learned counsel for petitioner placed reliance on the decision given recently by this Court in **Criminal Writ Petition No.469/2015 [Rajendra s/o. Ganpatrao Ambhore Vs. The Union of India and Ors.] dated 5.1.2021**. This Court has considered the effect of the aforesaid Black Magic Act. Object of the Act is quoted at para No. 17 of the decision and it is as under :-

“17 The object of the Black Magic Act is as under:

“An Act to bring social awakening and awareness in the society and to create a healthy and safe social environment with a view to protect the common people in the society against the evil and sinister practices thriving on ignorance, and to combat and eradicate human sacrifice and other inhuman, evil, sinister and aghori practices propagated in the name of so called supernatural or magical powers or evil spirits commonly known as black magic by conmen with sinister motive of exploiting the common people in the society and thereby destroying the very social fibre of the society; and for matters connected therewith or incidental thereto.”

The relevant definitions from the Black Magic Act are as under:

“2. (1) In this Act, unless the context requires otherwise,-

(a)

(b) “human sacrifice and other inhuman, evil and *aghori* practices and black magic” means the commission of any act, mentioned or described in the Schedule appended to this Act, by any person by himself or caused to be committed through or by instigating any other person;

(c)

(d) "propagate" means issuance or publication of advertisement, literature, article or book relating to or about human sacrifice and other inhuman, evil and *aghor* practices and black magic and includes any form of direct or indirect help, abatement, participation or cooperation with regard to human sacrifice and other inhuman, evil and *aghor* practices and black magic;"

Section 2(2) of the Black Magic Act runs as under:

"2. (1)

(2) Words and expressions used but not defined herein, shall have respective meanings as assigned to them in the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 and the Code."

Entry No.2 in the Schedule given to Black Magic Act runs as under:

"(2) Display of so-called miracles by a person and thereby earning money; and to deceive, defraud and terrorize people by propagation and circulation of so-called miracles."

Entry at item 11(a) is also relevant and it is as under:

"(11) (a) To create an impression that special supernatural powers are present in himself, incarnation of another person or holy spirit or that the devotee was his wife, husband or paramour in the past birth, thereby indulging into sexual activity with such person;"

The aforesaid entries show that when there is a claim that supernatural powers are present in the claimant

like he has achieved *Siddhi*, that claim is also covered by these items.”

This Court has held that the propagation, publication of advertisement in respect of *Hanuman Chalisa Yantra* is not allowed as it amounts the spreading of superstition which is prevented under this Act. The various sections of the Act are discussed by this Court and then reliance is placed on Article 51-A of the Constitution of India.

21) The aforesaid activity of the trustees certainly falls under the prohibited acts mentioned in aforesaid Black Magic Act. Further, as already observed the activities are not permitted by the Maharashtra Public Trust Act and the scheme framed for the present trust under the Act, this Court has avoided to give the details of the stories about *Yoginies*. If the trustees wanted to spread the stories about *Yoginies* and about *Tantra* which is similar to black magic, then this act was certainly objectionable and prohibited. This Court has no hesitation to hold that in the present matter, the act which is prohibited under aforesaid Special Enactment of the State is committed by the trustees.

22) The record of so called inquiry made by clerical staff of the trust office, inaction on the part of Deputy Charity Commissioner in the case, show of inquiry made by police into the matter show that

the authorities have no courage to take action even when such serious thing has happened. That might have happened due to general fear which may be in the minds of the persons like police officers or judicial officers who are of the rank of Civil Judge, Senior Division working in Charity Commissioner's Office and they are avoiding to take steps against the trust committee which includes officer of the rank of District Judge. The general fear may be of different kind like possibility that they may invite trouble as the matter involves religious feelings and it can be viewed as act against God. In view of the Article 51-A of the Constitution of India, this Court holds that the authorities are expected to work with secular mind in such case and they need to adhere to the 'truth'. The authority needs to have scientific approach in such matters and they need to adhere to the provisions of law. With that approach they need to make inquiry and investigation and take action. The authority cannot accept the religious propositions like made in the present matter for trustees as such propositions cannot be scientifically proved. If no such approach is adopted, 'truth' will always suffer defeat and the tendency like one shown by the trustees in the present matter will go on increasing. The report of police shows that they want to wait for inquiry which can be made under section 41-B of the Trust Act. The trust office did some examination of the record through clerical staff, but no decision is taken and it shows that they are avoiding to take action.

23) The discussion made above shows that many persons had made an attempt to draw the attention of the authorities to the illegalities. They avoided to discharge their duty probably for the reasons quoted above. This Court holds that this Court cannot shirk its responsibility. This Court holds that even the trustees like the petitioner who was party earlier, can be made accused as one of the conspirators. All the trustees who were party to the resolution and who approved the expenditure subsequently also can be booked for these illegalities. The complaint is already given by ANIS and that can be treated as the base for starting the investigation, for registration of the crime. Intervention application filed by ANIS is already allowed by this Court and so the following order.

ORDER

- (i) The petition is allowed.
- (ii) Direction is hereby given to the concerned police station having jurisdiction over the religious endowment to register the crime on the basis of complaint dated 7.3.2017 of ANIS for commission of cognizable offences.
- (iii) Crime can be registered for the offence of conspiracy, for the offence of cheating, for the offence of misappropriation, for the offence of breach of trust and also for offence punishable under the Black Magic Act and also under the other provisions which police may deem fit.

(iv) In view of the peculiar circumstances of the case, District Superintendent of Police, Ahmednagar is to see that the investigation of the matter is made by police officer of the rank of Additional Superintendent of Police or Deputy Superintendent of Police.

(v) Workers of ANIS are entitled to give more information to police and the original informant and police need to collect entire relevant record.

(vi) Investigation needs to be completed within six months from the date of this order.

Rule is made absolute in aforesaid terms.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

After pronouncement of judgment, learned Senior Counsel Shri. Deshmukh requested for stay to the operative order. On many occasions, this Court expressed that the counsel appointed by the trust need to protect the interest of the trust. Today also the learned Senior Counsel is attempting to protect the interest of the trustees and not the trust. Giving stay to the order will amount to give protection to the accused and it will be against the religious endowment. So, such relief is refused.

[M.G. SEWLIKAR, J.]

[T.V. NALAWADE, J.]

SSC/