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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.226 OF 2016

Smt. Prabhadevi Abhimannu Valavi,
Age : Major, Occu. Housewife
R/o Yuvraj Niwas, Hatoda Road,
Taloda, Tq. Taloda,
Dist. Nandurbar

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through Police Officer,
Taloda Police Station
2. Shivaji Jethya Valavi,
Age : 69 years, Occu. Agri.,
R/o Rajmohi-Mothi, Tq. Akkalkuwa,
Dist. Nandurbar

..RESPONDENTS

Mr G.D. Jain, Advocate for petitioner;
Mr N.T. Bhagat, Addl. Public Prosecutor for respondent no.1;
Mr S.V. Natu, Advocate for respondent no.2

CORAM : N.W. SAMBRE, J.

DATE : 2nd September, 2016

ORAL ORDER :

Heard respective Counsel at length.

2. In Regular Criminal Case No.37 of 1999, P.W.8 Shivaji, was examined on 29th August, 2011, before the learned Judicial Magistrate First Class, Taloda and based on admissions given in his evidence, he is sought to be impleaded as accused, which application came to be rejected by the

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learned Magistrate on 16th November, 2011, which was further confirmed in a revision before the learned Additional Sessions Judge, Shahada, on 4th July, 2015.

3. The aforesaid orders are questioned in the present petition, on the ground that once it is noted that P.W.8 Shivaji was the author of the proceedings book (Exh.112); Receipt Book (Exh.111), Kird book (Exh.110), the court below ought to have ordered prosecution of the said witness, based on his admissions.

4. Per contra, Mr Natu, learned Counsel appearing on behalf of respondent no.2, invites my attention to the provisions of section 132 of the Evidence Act, which read thus :-

“A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

Proviso - Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.”

5. In addition, Mr Natu would submit that the order of the Joint Charity Commissioner, which is formed to be the basis for inferring that there was

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tampering/forging of the record of the trust, was also not produced in the present proceedings.

6. So as to substantiate his contention that the protection under section 132 of the Evidence Act is available to respondent no.2 – accused, he would rely upon the judgment of the Apex Court, in the matter of **R. Dineshmukar alias Deena vs. State, Rep. By Inspector of Police & ors.**, reported in **AIR 2015 SC 1816**, particularly on observations in paragraph 11 of the said judgment.

7. Having bestowed my thoughts to the submissions made, it is really difficult to appreciate, in absence of copy of the order of the Joint Charity Commissioner, which should have been produced before this Court to form an opinion that P.W.8 Shivaji is required to be added as accused for the purpose of alleged act of doctoring of the documents.

8. Apart from above, in my opinion, Mr Natu, learned Counsel appearing on behalf of respondent no.2, has rightly claimed privilege as provided under section 132 of the Evidence Act in favour of respondent no.2, as P.W.8 Shivaji, during the course of his deposition has admitted to be the author of certain documents, which are claimed to be forged one.

9. In view of above and having regard to the observations in the judgment of the Apex Court, in the matter of R. Dineshkumar alias Deena (supra), in my opinion, both the Courts below have rightly rejected the

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claim of the petitioner. In view thereof, no case for interference is made out. Criminal Writ Petition, therefore, stands rejected.

(N.W. SAMBRE, J.)

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