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

CRIMINAL WRIT PETITION NO.386 OF 2016

Ramrao s/o Murhari Phad,
Age: 54 years, Occ: Agri.,
R/o Khadgaon, Tq. Gangakhed,
Dist. Parbhani.

..PETITIONER

VERSUS

1. Mahadev s/o Abaji Phad,
Age: 40 years, Occ: Agri.,
R/o. Khadgaon, Tq. Gangakhed,
Dist. Parbhani.

2. The State of Maharashtra,
Through Police Station Officer,
Gangakhed, Tq. Gangakhed,
District Parbhani.

..RESPONDENTS

Mr M.P. Kale, Advocate for petitioner;
Mr Vivek Bhavthankar, Advocate for respondent No.1
Mr K.D. Mundhe, A.P.P. for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 23rd August, 2016

ORDER :

The complainant in Regular Criminal Case No. 37 of 2004 is died during the pendency of the said complaint i.e. 29th May, 2015. The complaint pertains to the fraud practiced by the petitioner – accused in getting himself enrolled as member of the trust.

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2. In the midst of the evidence, when the original complainant Walmik died on 29th May, 2015, respondent No. 1 took recourse to the provisions of Section 302 of the Code of Criminal Procedure and sought substitution and permission to prosecute the complaint, which came to be allowed, by the order impugned passed below Exhibit-180 by learned Magistrate on 25th January, 2016.

3. Mr. Kale, learned Counsel for the petitioner made two-fold submissions:-

(a) According to him, the order impugned is not sustainable on the ground that the Magistrate proceeded on the premise that respondent No. 1, who claims substitution for prosecuting the complaint is a son, whereas he is just office bearer of the trust and (b) that the Court below i.e. learned Magistrate failed to understand the scheme of Section 302 read with Section 256 of the Code of Criminal Procedure.

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4. While countering the above referred submissions, while inviting my attention to paragraph-18 of the judgment of the Apex Court in the matter of **Rashida Kamaluddin Syed and another vs. Shaikh Saheblal Mardan (Dead) by L.Rs. and another** reported in **A.I.R., 2007 SC (Supp) 94**, Mr. Bhavthankar, learned Counsel for respondent No. 1 would submit that the word used in Section 302 of the Code of Criminal Procedure 'any person' includes third person, who has no blood relation or any relation with the complainant. According to him, present respondent No. 1 is Secretary of the trust and logically speaking is know how of entire proceedings as he was cited as one of the witness examined in support of the claim. According to him, the present petition needs to be rejected.

5. Having bestowed my thoughts to the submissions made, it is required to be noted that learned Magistrate, though in Paragraph-1 has recorded that respondent No.1 is the son of

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deceased complainant Walmik, who died on 29th May, 2015, however, after considering the contents of complaint and scheme of Section 302 of the Code of Criminal Procedure, particularly as interpreted in the judgment of the Apex Court in the matter of **Rashida Kamaluddin Syed** (supra), has allowed the application.

6. Paragraph-18 of the said judgment of the Apex Court in the matter is worth considering. Section 302 of the Code of Criminal Procedure, in my opinion, cannot be given restrictive meaning to include 'any person' means only legal representative or blood relation of the original complainant. Had it been an intention of the legislature to restrict the substitution after death of original complainant to that of only legal heir, specific wording to that effect should have been used by the legislature. The wording, in my opinion, as has been employed in Section 302 of the Code of Criminal Procedure 'any person' has to be given liberal interpretation to mean any person

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interested.

7. In the above referred back ground, in my opinion, even if presuming that learned Magistrate has proceeded on the basis of the consideration that respondent No.1 is happened to be a son of the deceased Walmik, original complainant, still the fact remains that his original identity as that of Secretary of the trust and not legal heir of deceased Walmik, would not dis-entitled him to be substituted. As such, the application as granted under Section 302 of the Code of Criminal Procedure in favour of respondent No. 2, in the light of observations made by the Apex Court in the matter of **Rashida Kamaluddin Syed** (supra), does not call for any interference. The writ petition fails and stands dismissed.

(N.W. SAMBRE, J.)

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