

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

CRIMINAL WRIT PETITION NO. 534 OF 2007

SYED MUKHTAR SYED FAYYAZ
age 40 yrs, Occ. Business,
R/o MIDC, Opp. Sipta Coated Steel
Factory, Cidco, Nanded. Petitioner.

VERSUS

1. The State of Maharashtra,
Through Police Station,
Gramin Nanded.
2. Sufi Begum w/o Mohd Ayub,
age 45 yrs, Occ. Household,
R/o Itwara, Nanded.
3. Mohd. Akheel s/o Mohd Ayub,
age 25 yrs, Occ. Business,
R/o Itwara, Nanded.
4. Mohd. Khaleel S/o Mohd. Ayub,
age 25 yrs, Occ. Business,
R/o Itwara, Nanded. Respondents.

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Advocate for Petitioner : Mr Uday Dalvi
APP for Respondents: Mr P G Borade
Advocate for Respondents 2-4 : Mr P P Mandlik & Amol
Gandhi

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CORAM : V.K. JADHAV, J.

Dated: August 31, 2016

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ORAL JUDGMENT :-

1. Being aggrieved by the common order dated
5.7.2007 passed by the Judicial Magistrate First Class,

Nanded below Exh.1 in Misc.Criminal Application No.61/2007 and 68/2007 and the order dated 27.8.2007 passed by the Sessions Judge, Nanded whereby Criminal Revision Petition No.94/2007 is allowed and Criminal Revision No.99/2007 preferred by the present petitioner dismissed, the petitioner-original complainant has approached this Court by filing present Criminal Writ Petition.

2. Brief facts, giving rise to the present Criminal Writ Petition, are as under :-

Petitioner-original complainant had filed an application bearing Criminal Application No.211/2007 before the learned Chief Judicial Magistrate, Nanded seeking directions to the Police Station, Nanded to register the crime against accused nos. 1 to 3 (present respondents) and investigate into the matter as per the provisions of Section 156 (3) of Code of Criminal Procedure. The learned 3rd Judicial Magistrate First Class, Nanded by order dated 9.3.2007 directed Rural Police Station, Nanded to make an investigation under Section 156 (3) of Code of Criminal Procedure by

treating the complaint to be the F.I.R. and submit final report. Accordingly Crime bearing No. 75 of 2007 came to be registered at Rural Police Station, Nanded for the offences punishable under section 420, 467, 468, 471 r/w 34 of Indian Penal Code. After due investigation, Rural Police Station, Nanded submitted charge-sheet before the Court and thus case is registered as R.C.C No. 394 of 2010. Said case is still pending before the Chief Judicial Magistrate, Nanded.

3. During the course of investigation, the investigating officer while investigating said Crime No. 75 of 2007 seized the machinery I.e two boring machines from the possession of deceased father of respondents no. 2 to 4 herein. The investigating officer seized one bor machine and, so far as another bor machine is concerned, sealed it and kept the same in possession of deceased father of respondents no. 2 to 4 herein. The petitioner-complainant when the crime was under investigation submitted an application before the Judicial Magistrate First Class, Nanded for the temporary custody of the Muddemal Property i.e.

aforesaid boring machines under the provisions of Section 457 (1) of the Code of Criminal Procedure. Said application is registered as Misc. Cri.Appln No.61/2007. Furthermore, the legal heirs of deceased Mohd.Ayyub (deceased father of respondents No.2 to 4 herein) also filed an application bearing Misc.Cri.Appln No.68/2007 seeking custody of the aforesaid Muddemal Property pending investigation of the Crime. The learned Judge of the Trial Court, after hearing arguments of the both the parties, by common order dated 5.7.2007 passed below Exh.1 in Misc Appln No.61/2007 and Cri. M.A.No.68/2007 rejected both the applications. Being aggrieved by the same, the legal heirs of said Mohd. Ayyub preferred Criminal Revision Application No.94/2007, whereas present petitioner-original complainant has preferred Criminal Revision Application No.99/2007. The learned Sessions Judge, Nanded by impugned order dated 27.8.2007 allowed the Revision petition No. 94/2007 filed by the legal heirs of deceased Mohd. Ayyub, however, Criminal Revision Application No.99/2007 preferred by the petitioner-complainant came to be dismissed. The learned

Sessions Judge, Nanded has further directed that, interim custody of the both the boring machines seized in Crime No.75/2007 by Police Station, Cidco Gramin be given to the revision petitioners in Criminal Revision Petition No.94/2007 on furnishing a personal bond and security bond with certain directions. Being aggrieved by the same, the petitioner/original complainant has filed present Criminal Writ Petition.

4. Initially, interim relief was granted, however, this Court, while issuing Rule by order dated 17.7.2008 vacated the said interim relief. Since, then, the respondents No.2 to 4 herein are in possession of said two boring machines.

5. I do not find any propriety in deciding the applications of the parties to this writ petition after lapse of more than nine years, when said applications came to be filed under the provisions of Section 457 (1) of Code of Criminal Procedure pending investigation of the Crime.

6. The learned counsel for the petitioner submits that, RCC No.394/2010 is still pending before the Trial Court for trial. As per the provisions of Section 452 (1) of Code of Criminal Procedure, when an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

7. So, in view of the above, at the conclusion of the trial, the learned Magistrate may take an appropriate decision on merit regarding the disposal of the said muddemal property boring machines. Needless to say that, observations made by the learned Sessions Judge, Nanded in the aforesaid revision petitions are restricted and to the extent of considering the application of the parties under the provisions of section 457 (1) of Code of Criminal Procedure. This writ petition can be disposed

of by directing the Magistrate to dispose of the Criminal Case RCC No.394/2010, as expeditiously as possible, preferably within a period of **FOUR MONTHS** from the date of appearance of the parties before it. It would be appropriate if the parties appear before the Court on **19.9.2016**. Order accordingly. Writ Petition is disposed of. Rule is accordingly made absolute in above terms.

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(V.K. JADHAV, J.)

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