

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

Criminal Writ Petition No. 1084 of 2016

District : Osmanabad

Samindrabai d/o. Dadarao Kanade,
Age : 56 years,
Occupation : Labour and Household,
R/o. Hasegaon (Shiradhon),
Taluka Kallam,
District Osmanabad,
At present R/o. Ganeshnagar,
Kallam, Taluka Kallam,
District Osmanabad.

.. Petitioner
(Original complainant)

versus

1. Hanumant s/o. Prabhakar Kanade,
Age : 41 years,
Occupation : Agriculture,
R/o. Hasegaon (Shiradhon),
Taluka Kallam,
District Osmanabad.

2. Prabhakar s/o. Dadarao Kanade,
Age : 64 years,
Occupation : Agriculture,
R/o. As above.

3. Suresh s/o. Jagannath Gore,
Age : 41 years,
Occupation : Agriculture,
R/o. Bansarola,
Taluka Kaij,
District Beed.

4. The State of Maharashtra,
Through P.S.I.,
Shiradhon Police Station,
Shiradhon, Taluka Kallam,
District Osmanabad.

.. Respondents
(Nos.1 to 3 -
Original accused)

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Mr. Prashant K. Deshmukh, Advocate, for the petitioner.

Mr. A.R. Kale, Addl. Public Prosecutor, for respondent no.4.

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CORAM : Z.A. HAQ, J.

DATE : 25TH NOVEMBER 2016

ORAL JUDGMENT :

Heard Adv. Mr. P.K. Deshmukh for the petitioner and APP Mr. A.R. Kale for respondent no.4 - State of Maharashtra.

02. Rule. Rule made returnable forthwith.

03. The petitioner - original complainant takes exception to the order passed by the learned Magistrate on 10th April 2015, rejecting the application (Exhibit No.66) filed by the petitioner - complainant praying that warrant be issued against Police Sub-Inspector, Shiradhon, Taluka Kallam, to enforce the production of sale deed which was seized in the enquiry.

04. The petitioner - complainant had filed an

application dated 03rd January 2015, praying that Police Station, Shiradhon, Taluka Kallam, be directed to produce the sale deed registered on 12th February 1998. The learned Magistrate passed an order on 03rd February 2015 and directed issuance of summons to Police Sub-Inspector for production of sale deed. However, the Police Sub-Inspector did not respond and therefore the petitioner - complainant is constrained to file the application (Exhibit No.66).

05. I find that the impugned order is unsustainable having been passed overlooking the earlier order passed on 03rd February 2015. The reason given by the learned Magistrate that the petitioner - complainant has not substantiated that the document is with Police Sub-Inspector, is without any basis and contrary to the observations made in the order passed on 03rd February 2015. Therefore, the impugned order is required to be set aside.

06. Hence, the following order :-

(a) The impugned order is set aside.

(b) The learned Magistrate is directed to ensure / enforce the production of sale deed in question and then proceed with the trial.

(c) Rule made absolute in the above terms. In the

circumstances, parties to bear their own costs.

(**Z.A. HAQ**)
JUDGE

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