

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

CRIMINAL WRIT PETITION NO. 1027 OF 2011

Syed kamal Ahmed s/o Syed
Ali Hussain (deceased), through his LR
Syed Ahmed Hussain s/o Syed Al. Hasan,
Age: 76 years, Occ: Agri.,
R/o. S.V. Patel Road, Purna,
Tq. Purna, Dist. Parbhani.

...Petitioner

versus

1. Smt. Padma w/o Lobhaji Late,
(Claims to be Smt. Asma Hussain
w/o Iqbal Hussain),
Age: 50 years, Occ: Household,
R/o. Vijay Nagar, Purna,
Tq. Purna, Dist. Parbhani.
2. Manju Lobaji Late,
(Alleged to be Salma Banu w/o Abdul Latif)
Age: 29 years, Occ: Household,
R/o. As above.
3. Bablu s/o Lobhaji Late,
(Alleged to be Ajmal Hussain
s/o Iqbal Hussain)
Age: 24 years, Occ: Nil,
R/o. As above.
4. Abdul Latif s/o Abdul Rahim,
Age: 35 years, Occ: Agri.,
R/o. As above.
5. The State of Maharashtra,
Through Purna Police Station,
Tq. Purna, Dist. Parbhani.

...Respondents

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Mr. S.G. Chapalgaonkar, Advocate for the petitioner
Mr. G.R. Syed, Advocate for respondent Nos. 1,2 and 4
Mr. D.V. Tele, A.P.P. for respondent/State

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CORAM : N.W. SAMBRE, J.

DATE : 29th MARCH, 2016

ORAL ORDER :

In a warrant case, other than police complaint filed by the original complainant, who expired, as such, his legal heir tried to pursue the matter, which prayer was rejected by the Magistrate and further upheld in the revision. The revisional Court, while dealing with the claim of the petitioner, legal heir of complainant, has observed that the petitioner has failed to substantiate the claim qua his legal right to pursue the complaint.

2. Learned Counsel for the petitioner, during the hearing of the present writ petition, has invited my attention to the following two judgments of this Court; **(1) Hariram Vensimalk Bharwani vs State of Maharashtra and another [2015(1) BOM.C.R. (CRI) 746]** and **(2) Shriman Kisanlalji Sarda Pratishthan vs. State of Maharashtra and others [2015 ALL MR (CRI) 3870]** and submits that in a warrant case, it is open for the legal heir to pursue the complaint.

3. As above referred law was not cited and considered by the revisional Court while dealing with the prayer, it will be appropriate, in my opinion, to set aside the order dated 27/07/2011 passed by the Sessions Judge, Parbhani. Hence, the following

order:-

(a) The order dated 27/07/2011 passed by learned Sessions Judge, Parbhani in Criminal Misc. Application No. 578 of 2011 is set aside and revision is restored to the file of learned Sessions Judge, Parbhani.

(b) Learned Sessions Judge, Parbhani shall decide the said Revision afresh, after taking into consideration the law cited in the above referred two judgments.

(c) The parties agree that they shall appear before the learned Sessions Judge, Parbhani on 13/04/2016.

4. Criminal Writ Petition, as such, stands partly allowed and disposed of in above terms.

[N.W. SAMBRE, J.]