

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.558 OF 2016
WITH
CRIMINAL APPLICATION NO.5448 OF 2015

1. Maruti S/o Vitthal Solanke,
Age-73 years, Occu-Agriculture,
2. Lokadu S/o Sambha Gonewad,
Age-75 years, Occu-Agriculture,
3. Prabhakar S/o Ganpati Kotgire,
Age-47 years, Occu-Agriculture and Up-
Sarpanch,
4. Baburao S/o Nivrutti Shinde,
Age-67 years, Occu-Agriculture,

Applicant Nos. 1 to 4 - All R/o Malkautha,
Tq.Mudkhed, Dist.Nanded

5. Devidas S/o Pandurang Rathod,
Age-45 years, Occu-Service as Gramsevak,
R/o Baban Nagar, Nanded

PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Police Station, Mudkhed,
Tq.Mudkhed, Dist. Nanded,
2. Sau.Mangalbai @ Minabai W/o Kantrao
Gunjkar, Age-38 years,
Occu-Household, R/o Mulava, Tq.Umarkhed,
Dist.Yeotmal.

RESPONDENTS

Mr.S.C.Yeramwar, Advocate for the petitioners.
Mr.N.T.Bhagat, APP for respondent No.1.
Mr.S.B.Ghatol Patil, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 29/06/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are aggrieved by the judgment and order dated 09/04/2014 delivered by the learned Sessions Judge, Nanded by which the Cri.Rev.Appl.No.76/2013 filed by respondent No.2 has been partly allowed. Consequentially, the order of the learned Magistrate dated 12/04/2013 rejecting the application of respondent No.2 u/s 156(3) of the Cr.P.C. has been set aside and the matter is remanded back for a rehearing.

3. I have considered the submissions of the learned Advocates for the respective sides.

4. The petitioners have strenuously submitted that respondent No.2, who is the widow of her first husband Ramesh Maruti Solanke, who passed away on 20/05/1997, was remarried to Kantrao Narayan Gunjkar, residing at Ganpati Ward, Mulawa (Salag) Tal.Umarkhed, Dist.Yeotmal. This aspect was brought to the notice of the Gramsevak / Sarpanch of Gram Panchayat, Malkautha, Tal.Mudkhed by the

father of deceased Ramesh Maruti. Based on the said communication, a public notice was published by the Sarpanch and Gram Sevak on 01/08/2012 as to whether there are any legal heirs to the deceased Ramesh Maruti. Since there was no response, the Gram Panchayat passed a resolution concluding that the plot owned by Ramesh Maruti would stand transferred to his father Maruti Vitthal.

5. Learned Advocate for the petitioners submits that the fact of respondent No.2 getting remarried was suppressed by her. She has not stated this fact in her Criminal Misc. Appl.No.13/2013 and thereby projected a picture that she resides at Malkautha, Tal.Mudkhed. Even after remarriage, she indicated to the Trial Court that she was living in her marital home after the demise of her husband.

6. By the impugned order of the learned Sessions Court dated 09/04/2014 has remitted the proceedings to the learned Magistrate for a rehearing on the count as to whether the Village Development Officer and the Up-Sarpanch would fall within the ambit of Public Servants and whether proper sanction for prosecution u/s 197 of the Cr.P.C. would be a pre-requisite or not.

7. I have considered the submissions of the learned Advocates and I find that the learned Sessions judge has rightly remitted the matter to the learned Magistrate for a rehearing. Issue of suppression of material facts and whether such suppression would affect the rights of the parties and whether the said suppression by respondent No.2 would be covered by the view taken by the Hon'ble Supreme Court in the matter of Kishore Samrite Vs. State of UP and others, (2013) 2 SCC 398 would also be gone into by the Trial Court only to find out as to whether respondent No.2 has approached the Trial Court with tainted hands.

8. In the light of the above, I am disposing of this petition and issuing the following directions to the Trial Court, besides the directions issued by the learned Sessions Judge, Nanded in the impugned order dated 09/04/2014 :-

- [a] The petitioners would be at liberty to place before the Trial Court such material as they may deem proper to indicate the purported suppression of facts by the original complainant.
- [b] Considering the further order dated 06/02/2015 passed by the learned Magistrate directing the Incharge of Mudkhed Police Station to register the crime against all 5 accused and investigate the matter, the petitioners would be at liberty to place the material even before the Investigating Officer.
- [c] The Trial Court shall consider whether there is any

suppression of facts by the complainant, whether such suppression affects the rights of the parties and whether it would have an impact on the proceedings initiated by the original complainant ?

[d] All contentions of the parties are kept open.

9. Rule is therefore discharged.

10. Pending criminal application, does not survive and is disposed of.

(RAVINDRA V. GHUGE, J.)