

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1498 OF 2015
(Shaikh Yasin s/o Shaikh Jalal Vs. The State of
Maharashtra and another)

Mr. Amol R. Gaikwad, Advocate for the petitioner
Mr. R.V. Dasalkar, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.
DATE : 20/01/2016

ORAL ORDER :

1. Heard.

2. Aggrieved by the order of the learned Sessions Judge, Beed, dated 5th November, 2015, passed in Criminal Revision Petition No. 130/2015, whereby the direction of the learned Judicial Magistrate First Class, Beed in Misc. Criminal Application No. 601/2013 of issuing process against respondents No. 1 and 2 was set aside, the present writ petition is filed.

3. The petitioner is the original complainant. His case was that his stepmother had got Hibinama executed from his father regarding the house in question and thereafter, she had sold the said house to respondent No. 2 i.e. original accused No. 2. The learned Judicial

Magistrate First Class had initially directed for calling report from the police under section 202 of the Code of Criminal Procedure. The police head constable appears to have made investigation. According to the said head constable, the natural signature of the father of present petitioner is different than the signatures found on the Hibanama. In the circumstances, the learned Judicial Magistrate First Class had issued process against the respondents No. 2 and 3 i.e. original accused Nos. 1 and 2 for the offence punishable under section 420 of the Indian Penal Code.

4. The learned Sessions Judge, in Criminal Revision Petition No. 130/2014, came to the conclusion that the allegations of the complainant are based on the own opinion of the complainant and the head constable, without having any expert evidence. No proof of blindness or mental illness of the deceased father of the complainant was put before the learned Judicial Magistrate First Class though it was alleged that due to these facts, the deceased had executed the Hibanama.

. It was also an admitted fact that the house property was self-acquired property of the deceased and

therefore, the learned Sessions Judge has observed that he was very well competent to dispose of the property during his lifetime in favour of his second wife. In the circumstances, the revision petition came to be allowed and the order of learned Judicial Magistrate First Class was set aside.

5. Upon hearing learned counsel for the petitioner, I do not find merit in the present writ petition. The learned Sessions Judge has forwarded the reasons which are based on the reports on record. In that view of the matter, the petition fails. Hence, the following order.

6. The criminal writ petition is hereby dismissed.

7. Needless to state that if any civil proceeding is filed, the observations made by this court in this order or by the learned Sessions Judge shall not put any hindrance in the independent findings which would be required to be arrived at by the Civil Court.

[M.T. JOSHI]
JUDGE