

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

Criminal Application No.1349 of 2008

- 1) Laxman s/o. Eknath Shirude,
Age 34 years,
Occupation: Service
R/o N-7, Cidco, Aurangabad.
- 2) Eknath s/o Bhika Shirude,
Age 60 years,
Occupation: Pensioner,
R/o As above.
- 3) Sindhubai w/o Eknath Shirude,
Age 55 years,
Occupation: Household,
R/o As above.
- 4) Bhagwat Eknath Shirude,
Age 38 years,
Occupation Business
R/o Avishkar Colony, N-6,
Aurangabad.
- 5) Sangita w/o Bhagwat Shirude,
Age 34 years,
Occupation: Household,
R/o As above.
- 6) Ravindra s/o Pandurang Navarkar,
Age 49 years,
Occupation: Business,
R/o Parola, District Jalgaon.
- 7) Surekha Ravindra Navarkar,
Age 38 years,
Occupation: Household,
R/o As above.

.. Applicants.

Versus

- 1) The State of Maharashtra.
- 2) Chandrakant s/o Sakharam
Bahalkar,
Age 60 years,
Occupation: Business,
R/o. 63, Badgujar Plot,
80-Footi Road, Dhule,
Taluka & District Dhule.

.. Respondents.

Shri. K.S. Kahalekar, Advocate, holding for Shri. N.S. Ghanekar, Advocate, for applicants.

Ms. V.S. Choudhari, Additional Public Prosecutor, for respondent No.1.

Shri. N.L. Choudhari, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 24 JULY 2018

JUDGMENT (Per T.V. Nalawade, J.):

- 1) The proceeding is filed under section 482 of the Code of Criminal Procedure for the relief of quashing of F.I.R. No.3/2008 registered in Azadnagar Police Station, Dhule. Crime is registered on the basis of order made by learned Magistrate in a private complaint filed by

respondent No.2 for offence punishable under section 406 read with 34 of Indian Penal Code. Both the sides are heard.

2) The respondent No.2 is father of the deceased Ashwini. She was given in marriage to applicant No.1 Laxman. Applicant Nos.2 to 7 are close relatives of applicant No.1. Ashwini died and in respect of that incident complaint for offence punishable under sections 304B etc. of IPC was filed. In the present matter it is the allegation of the respondent No.2 that in the marriage he had given ornaments and some articles to Ashwini and they were her *stridhan*. Allegation is made that for purchasing a plot he had given amount of Rs.75,000/- and so the plot purchased was also *stridhan* of the deceased. It is his contention that after the death he had given notice to the present applicants, he had asked the applicants to return the property but they have not returned the property. It is his contention that the two issues of Ashwini are with him and he is taking care of them.

3) Learned counsel for the respondent No.2 produced a copy of so called note left by the deceased. In that note she had expressed that if something happens to her, her parents need to take care of her issues and the property needs to be given to her issues.

4) A copy of First Appeal No.767/2011 decided by this Court is produced on record and it shows that the proceeding No.54/2008 was filed by present applicant No.1, father of the minors for getting custody of the two issues. That matter was decided in his favour. Said decision was challenged by the present complainant but the appeal came to be dismissed on 12-12-2011. In view of the decision, the issues were handed over to present applicant No.1.

5) If the aforesaid circumstances are kept in mind, it can be said that being the issues of the deceased they are entitled to get the property left behind by Ashwini. The issues are with applicant No.1, who is father and natural guardian of the minors. In view of these circumstances, the complainant cannot say that the

applicants have committed offence punishable under section 406 read with 34 of the Indian Penal Code due to keeping of the property of the deceased Ashwini with them. This Court holds that it will be abuse of process of law if the applicants are asked to face the trial for such offence. In the result, the application is allowed. Relief is granted in favour of the applicants in terms of prayer clause (B). Rule made absolute in those terms.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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