

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

CRIMINAL WRIT PETITION NO.549 OF 2018

Tarabai w/o. Deelip Jagtap,
Age : 30 years, Occ. Household,
r/o. Parner, Tq. Parner,
Dist. Ahmednagar ..Petitioner

Vs.

1. The State of Maharashtra
2. Madhavrao Balasaheb Deshmukh,
Age : 45 years, Occ. Agri.,
r/o. Ranjangaon Mashid,
Tq. Parner,
Dist. Ahmednagar ..Respondents

Mr.S.R.Wakale, Advocate for petitioner
Ms.R.P.Gaur, APP for respondent no.1

**CORAM : SANGITRAO S. PATIL, J.
DATE : JUNE 22, 2018**

ORAL JUDGMENT :

The learned Counsel for the petitioners submits that notice has been served on respondent no.2. The service affidavit to that effect is produced. Service is complete as against respondent no.2. None appeared for respondent no.2.

2. Rule, returnable forthwith. With the consent of the learned Counsel for the petitioners and the learned APP, heard finally.

3. The learned Counsel for the petitioners submits that the application (Exh.45) was filed before the learned Trial Judge for recalling the informant - Madhavrao Deshmukh for further cross-examination to ask questions in respect of the amicable settlement that was effected between the informant and the petitioners. He submits that the learned Trial Judge allowed that application, but with a direction that the informant should be cross-examined in respect of the Muddemal property only. He submits that the application was not filed for that purpose. He, therefore, prays that the impugned order may be set aside and the petitioners may be allowed to cross-examine the informant on the point of amicable settlement and also in respect of seized property.

4. The learned APP opposed the application on the say that necessary opportunity was already given to the petitioners to cross-examine the informant. It was not necessary to recall the informant for further cross-examination.

5. The application (Exh.45) basically was for recalling of the informant in order to enable the learned Counsel for the petitioners to ask questions in respect of the alleged amicable settlement. However, there is no whisper in the impugned order, as to why the petitioners were not allowed to ask the questions in respect of the amicable settlement. Though there is no mention in the application (Exh.45) that the questions were required to be put to the informant in respect of the seized property, the impugned order permits the petitioners to ask the questions limited to the seized property only. The impugned order is sans reasons. When the learned Trial Judge accepted the prayer for recalling the

informant, there was no justification for putting limitation on the petitioners to ask the questions in respect of the seized property only. The impugned order is not legal proper and correct. It is not sustainable.

6. In the result, I pass the following order :-

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 16.03.2018 passed by the learned Trial Judge in Sessions Case No.130 of 2008 below application (Exh.45) is quashed and set aside.
- (iii) The learned Trial Judge is directed to allow the petitioners to ask the questions in respect of the alleged amicable settlement and if necessary, on other points as well.
- (iv) The petitioners shall appear before the Trial Court on the next scheduled date and co-operate the learned Trial Judge in

disposal of the Sessions Case as expeditiously as possible.

(v) Rule is made absolute accordingly in the above terms.

(vi) The Writ Petition is disposed of.

[SANGITRAO S. PATIL, J.]