

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2368 OF 2018

Mohd. Azimoddin Mohd. Hamidoddin,
Age- 51 years, Occu- Business,
R/o. House No. 4-11-43,
Azam Colony, Roshan Gate,
Aurangabad.

... APPLICANT

VERSUS

01. State of Maharashtra,
Through Police Station Officer,
Jinsi Police Station, Aurangabad,
Dist.- Aurangabad.

02. Mumtaz Khatib W/o MazidKhatib,
Age- 63 years, Occu- Household,
R/o. Sharif Colony (Near Urdu School),
Roshan Masjid, Aurangabad.

... RESPONDENTS

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Mr. Shaikh Mazhar A. Jahagirdar, Advocate for Applicant.

Mr. R. V. Dasalkar, APP for Respondent No.1 / State.

Mr. S. R. Shinde, Advocate for Respondent No.2 (Appointed).

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 11th December, 2018.

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

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of C.R. No.394 of 2016, registered with Jinsi Police Station, District Aurangabad, for the offence punishable under Section 448 of the Indian Penal Code and also for quashing the case filed in the C.R. in the Court of learned Judicial Magistrate First Class, Aurangabad.

3 The crime is registered on the basis of report given by Respondent No.2. She did not turn up even after service of notice and so a counsel was given through Legal Aid to her and the matter was heard. In the FIR given on 30th October, 2016, she has made allegations that on 27th October, 2016 at about 08:00 pm, when she went to the house of her deceased sister, she noticed that the lock put on by her on the door was broken and the present Applicant who is husband of the deceased sister of first informant, was living in the house. It is her case that she was living in this house and she had

obtained certificate from the District Court of guardianship of children of her deceased sister and the certificate also includes the property left behind by the deceased sister and so the present Applicant against whom the case is filed for the offence of murder of deceased sister cannot use the property.

4 During arguments, both the sides took this Court through some record. The order was made by the District Court in favour of first informant on 2nd September, 2016, but to that proceeding, the present Applicant, who is the husband of deceased was not made party. Though it is not disputed that the case of murder is filed against him, but that does not mean that he was not entitled to contest the proceeding as he is not yet convicted. The submissions made show that he got bail on 8th September, 2016 in the said matter. It was submitted that after getting the bail, the Applicant went to the house where he was living with the deceased and two issues and he started living there and criminal intention cannot be inferred against him for entering the house. It was submitted that in any case, he will be entitled to some share in the property of the deceased if he is not convicted for the offence and for that reason also, it cannot be said

that he committed the offence of criminal trespass. There is force in this submission.

5 Considering the nature of allegations and as the District Court has granted certificate under Guardian and Wards Act in favour of first informant, the said certificate needs to be challenged though the present Applicant was not party Respondent to the said proceeding. In view of the certificate and entitlement of the issues of the deceased who live in that house, this Court made a query and asked the husband about the right of the issues of the deceased. Upon that, the learned counsel for Applicant after taking instructions from the Applicant made a statement that the Applicant will not enter that house unless Civil Court gives decision on his rights. The Applicant also undertook to give such undertaking in the Court. In view of these circumstances, this Court holds that relief needs to be granted to the Applicant. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clause (B) and

relief is granted only due to statement made by the learned counsel for Applicant on taking instructions in Court from present Applicant, Mohd. Azimoddin that the Applicant will not enter the house, which is standing in the name of his deceased wife and he will not create obstruction in the use of the house by the issues, who are son and daughter. That kind of undertaking is to be filed in the Court today itself to be sworn before the Registrar (Judicial) of this Court and that is to be made part of this record.

III. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]

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