

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 1520 OF 2003

Shri.Dagadu @ Dattaram Ganpat Bamnane & Ors. ...Petitioners

V/s.

Shridevi Somjai, Janai, Kalkai Devasthan
Through Shri Ganpat Tukaram Sondkar & Anr. ... Respondents

Mr.C.G.Gavnekar for the Petitioners.
Mr.Pradeep Patil i/b. Mr.Baburav D. Shinde for Respondent No.1.
Mr.A.R.Patil, APP for Respondent No.2-State.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATE : 29 NOVEMBER 2018**

P.C.:

1. In this Petition, the order dated 13.03.2003 passed by the learned Judicial Magistrate First Class, Mahad in R.C. No. 22 of 2003 issuing the process of search warrant against the petitioners; the order dated 26.09.2003 passed by the learned (I) Adhoc Addl. Sessions Judge, Raigad- Alibag confirming the order dated 13.03.2003 passed by the learned Magistrate, Mahad in R.C. No. 22 of 2003 and also the order dated 3.10.2003 passed by the learned (I) Adhoc Additional Sessions Judge, Raigad-Alibag rejecting Criminal Misc. Application No. 476 of 2003 are challenged.

2. There is dispute between the petitioners and the respondents in respect of ornaments of deity and, therefore, a complaint was lodged. Pursuant to which,

the learned Magistrate issued process under Sections 420, 403, 406 read with 34 of the Indian Penal Code ("the I.P.C.") against the accused and passed an order of issuance of general search warrant under Section 91 of the Code of Criminal Procedure, 1973 ("the Cr.P.C.") to produce the properties as mentioned in paragraph no.4 of the complaint. Against the said order, the petitioners had filed Criminal Revision Application No. 150 of 2003 before the Sessions Court, Raigad-Alibag. The learned Sessions Judge disposed of the Revision Application by an order dated 26.09.2003 as both the parties agreed that they have separate deity and they would install in separate temples. However, the order of issuance of search warrant was not cancelled. Against which, the petitioners preferred Criminal Misc. Application No. 476 of 2003 for reviewing the order dated 26.09.2003. The learned (I) Adhoc Additional Sessions Judge, Raigad-Alibag by an order dated 03.10.2003 rejected Misc. Application No. 476 of 2003 as it is not tenable. Hence, this Writ Petition.

3. This Court, at the outset, states that review under Cr.P.C. is not maintainable, as review is a statutory provision under law so no fault can be found in the order of rejecting the Misc. Application.

4. It is pertinent to note that both the parties are fighting for the ornaments of deity and as per the order of the Sessions Court, two deities are installed by the parties. The order of search warrant was passed in the year 2003. Thus, the

order has become infructuous so also the Petition. Hence, nothing remains in this Petition. However, in view of the order dated 03.10.2003 passed by the learned (I) Adhoc Additional Sessions Judge, Raigad-Alibag, the parties are directed to appear before the learned Judicial Magistrate First Class, Mahad on 05.12.2018 at 11.00 a.m. The learned Magistrate to consider the pendency of the matter, as it is pending since 2003. The learned Magistrate to see whether anything remains in the matter in view of the submissions made before the Sessions Court by both the parties and if required, it is to be referred to a Mediator. The learned Magistrate to conclude the matter within a period of two months from today.

5. With this, Writ Petition is disposed of.

6. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)