

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

**CRIMINAL WRIT PETITION NO. 29 OF 2019**

1. Smt. Rahibai wd/o Kisan Borade,  
Age:68 Years, Occu.- Household,  
R/o. Ranjangaon Shenpunji,  
Tq. Gangapur, Dist. Aurangabad.
2. Sow. Vatsala W/o Manik Rahane,  
Age:40 Years, Occu.:Household,  
R/o. Wadachiwadi (Shahapur Banjar),  
Tq. Gangapur, Dist. Aurangabad.
3. Sow. Chandrakala W/o Sainath Navpute,  
Age 35 years, Occ.: Household  
R/o. Mahadeo Galli, Behind Post Office,  
Chikalthana, Tq. & Dist. Aurangabad.
4. Sow. Shakuntala W/o Bharat Jadhav,  
Age 32 years, Occ.:Household,  
R/o. Ranjangaon Shenpunji,  
Tq. Gangapur, Dist. Aurangabad.
5. Sow. Latabai W/o Vishwas Navpute,  
Age 30 years, Occ. : Household,  
R/o. Sutarwada Chikalthana, Aurangabad,  
Tq. & Dist. Aurangabad.

... **Petitioners**

Versus

1. State of Maharashtra,  
[The Department of Home,  
Government of Maharashtra,  
Mantralaya, Mumbai -32].
2. The Police Commissioner,  
Aurangabad.
3. The Assistant Police Commissioner,  
Cantonment Division, Aurangabad City,  
Aurangabad.

4. Deputy Police Commissioner,  
Circle-I, Aurangabad.
5. The Police Inspector,  
MIDC Waluj Police Station,  
Aurangabad.
6. The Police Inspector Sable,  
MIDC Waluj Police Station,  
Aurangabad.

... Respondents

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Mr. A.G. Godhamgaonkar, Advocate for the Petitioners.  
Mr. M.M. Nerlikar, A.P.P. for respondents /State.

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**CORAM : T.V. NALAWADE &  
MANGESH S. PATIL, JJ.**  
**DATE : 12.03.2019**

**JUDGMENT :- (Per: Mangesh S. Patil, J.)**

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P. waives service. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioners are seeking direction to the concerned Investigating Officer to conduct the investigation *in extenso*.

3. Shortly stated the facts leading to the filing of this writ petition are to the effect that the husband of the petitioner no.5 lodged the F.I.R. on 10.11.2017 inter alia alleging that on account of a land dispute between the family of the petitioners on the one hand and that of cousin brother of his

father-in-law on the other hand, Regular Civil Suit No.213 of 2017 was filed by the them on 25.07.2017 and even a notice was published in a newspaper not to enter into any transaction for purchase of the land Gut No.5. However, a mutation entry was recorded by Talathi of village Ranjangaon on 15.10.2017 behind petitioners back and on that basis on 16.10.2017 the heirs of his cousin father-in-law sold the land to three persons. Protesting it, with a view to not to effect any further mutation, the petitioner no.1 who happens to be his mother-in-law had applied to the concerned Tahsildar on 23.10.2017 and the matter was fixed for hearing on 09.11.2017. It was further alleged that on 09.11.2017 he went to the office of Talathi at Ranjangaon by parking his car in the land and when he returned back at 11.30 a.m. the accused persons with a mob of 40 to 50 unknown persons assaulted him, the petitioner nos.1 and 4 as well as a land labour. Chilli Powder was splashed at them and they were assaulted with iron rod and sticks. They were referred to Ghati Hospital at Aurangabad and thereafter the F.I.R. was lodged and the crime was registered.

4. The learned advocate for the petitioners vehemently submits that since inception, the Investigating Officer has not been discharging the duty fairly. In the very same episode in fact, an amount of Rs.30,000/- was stolen from the informant's pocket besides even gold tops of the petitioner no.1 were robbed off. In spite of such serious allegations, some simple allegations were

only allowed to be inserted in the F.I.R. with an object to rope the accused in a less serious crime. A protest was lodged by him on 26.12.2017 (Exhibit-I) and still with no effect. Now even though the charge-sheet has been filed, the investigation itself being faulty there is no possibility of the culprit being charged for any serious offence. Therefore necessary directions need to be issued by this Court.

5. The learned A.P.P. by referring to the affidavit-in-reply filed by the Investigating Officer submits that apart from the informant the petitioner no.1 and 4 are the eye witnesses and besides the labour Meerabai Baburao Gavali is also an eye witness. Their statements have been recorded and pursuant to it after completing the investigation the charge-sheet has been filed. It would now be better left to the learned trial Court to ponder upon the issue and if at all occasion arises the learned trial Judge has every power to frame a suitable charge at any stage of the proceeding during the course of the trial. The learned A.P.P. points out that in the statements of the injured witnesses the petitioner no.1 and 4 as well as injured Meerabai B. Gavali the only allegation about assault was made by each of them and none of them has alleged about stealing of money or ornaments. Particularly the petitioner no.1 is conspicuously silent about any gold tops on her person were stolen.

6. The learned advocate for the petitioners by referring to the

affidavit in rejoinder of petitioner Latabai submits that it is precisely the grievances of the petitioner that since inception the Investigating Officer has not been fair in conducting the investigation and therefore no weight should be attached to the statements of the petitioner nos.1 and 4 and the injured Meerabai regarding absence of any allegations of theft of cash and gold ornaments.

7. It is a common ground that since filing of the petition the investigation has progressed and has culminated in filing a report in the form of charge-sheet under Section 173 of the Code of Criminal Procedure.

8. True it is that the offence has been registered only under Sections 143, 147, 148, 149, 324, 504, 506 of the Indian Penal Code and for the offence punishable under Section 135 of the Maharashtra Police Act. Obviously the allegations regarding theft of an amount of Rs.30,000/- from the informant and the gold tops of the petitioner no.1 do not form the basis of the charge-sheet. But then, the investigation has proceeded further on the basis of the contents of the F.I.R. and the statements of the petitioner no. 1, 4, injured Meerabai and some other witnesses recorded under Section 161 of the Code of Criminal Procedure. Obviously the Investigating Officer could not have travelled beyond such F.I.R. and the statements recorded under Section 161 of the Code of Criminal Procedure.

9. Assuming that since inception the informant and the petitioners were not satisfied with the progress of the investigation and were questioning the conduct of the Investigating Officer, they could have promptly approached this Court and solicited the directions which they are now soliciting, after a lapse of almost one year and ten months of lodging of the F.I.R. It has been lodged on 10.11.2017, whereas the petition has been filed in the month of January 2019. By allowing such time to lapse the petitioners committed a serious lapse which by passage of time has resulted in filing of the charge-sheet.

10. Needless to state that there are ample provisions under the Cr.P.C. like Section 216 which enables a Magistrate conducting trial not only to frame appropriate charge but he can do that at any stage of the proceeding. Similarly a Magistrate may add a person as an accused and when such a course is available for the trial Magistrate pursuant to the charge-sheet filed in the case, we are of the considered view that this Court under the writ jurisdiction should not pass any order as prayed for.

11. The Writ Petition is dismissed. The Rule is discharged.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]