

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

CRIMINAL WRIT PETITION NO.375 OF 2019

Shivaji Amrutrao Gondkar,
Age 49 years, Occu. Agri.,
R/o. Shirdi, Taluka Rahata,
District Ahmednagar.

.. Petitioner

VERSUS

- 1 The State of Maharashtra
Through Superintendent of Police,
S. P. Office, Ahmednagar.
 - 2 The Deputy Superintendent of Police,
Shirdi, Tal. Rahata, District Ahmednagar.
 - 3 The Deputy Collector,
Shirdi, Tal. Rahata, District Ahmednagar.
 - 4 The Police Inspector, Shirdi Police Station,
Taluka Rahata, District Ahmednagar.
 - 5 The Chief Executive Officer,
Shri. Saibaba Sansthan Trust, Shirdi,
Taluka Rahata, District Ahmednagar.
- .. Respondents

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Mr. Shailesh S. Chapalgaonkar, learned counsel for petitioner.
Mr. D. R. Kale, learned APP for the respondents No.1, 2 and 4 - State.
Mr. S. R. Chowkidar, learned counsel for respondent No.5.

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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 26th JUNE, 2019.

ORAL JUDGMENT :-

(PER : T. V. NALAWADE, J.) :-

Rule. Rule made returnable forthwith. Heard finally with consent of learned counsels for the parties.

2. The proceeding is filed to challenge the notice given by respondent No.4 - Police Inspector, Police Station, Shirdi, Taluka

Rahata, District Ahmednagar, under Section 149 of the Code of Criminal Procedure, 1973 (Cr.P.C.). In the notice it is mentioned that on 22-11-2018, when there was Palkhi Procession of Shri Sai Baba, the present petitioner was walking along side the Palkhi and ahead of Palkhi when he was not authorized to do so. It is mentioned that during the Palkhi procession, he entered in the Chavadi Mandir and due to that some villagers became angry and they made complaint against him. It is mentioned that in future if he enters in the Palkhi procession then there will be some problem of law and order. In notice, it is also mentioned that, Shri. Sai Baba Sansthan had made application for taking action against the petitioner and due to that notice was given. It is mentioned that if in future he or his associate does any act during Palkhi procession and due to that there is breach of public peace and there is question of law of order, action will be taken under provisions of the Bombay Police Act, 1951.

3. Learned counsel for the petitioner submitted that there are no rules, as such and as a devotee, he has right to walk along side Palkhi Procession on Palkhi Marg. This matter was adjourned last time to give an opportunity to the learned counsel of Shirdi Sansthan to show the rules with regard to Palkhi procession. Today, Mr. Chowkidar, learned counsel for respondent No. 5 - Sansthan submitted that he is ready with the reply, but the reply is not approved by the committee of respondent No.5. He is not able to show the rules made with regard to Palkhi Procession. Today, learned counsel for the respondent No.5 made statement that the petitioner is not claiming any right to carry and hold Palakhi. In view of such statement, this Court holds that relief needs to be given.

4. In the notice given under Section 149 of the Cr.P.C. there is mention that the petitioner was not authorized to do such thing. Such opinion can be formed, only when there are rules. When there are no rules, such opinion can not be formed and it is unfortunate that only because, on request, such notice was issued against petitioner.

5. In the result, petition is allowed. The aforesaid notice is quashed and set aside. Rule made absolute.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

rrd.