

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

CRIMINAL WRIT PETITION NO. 1808 OF 2019

Anusaya Parmeshwarreddy Yalawad,
Age 20 years, Occupation Education,
R/o Kini Taluka Bhokar Dist.Nanded. **...Petitioner.**

Versus

- 1) The State of Maharashtra,
Through Police Station, Bhokar
Dist. Nanded.
- 2) Saiprasad s/o Rajeshwar Ambekar,
Age 25 years, Occupation Driver,
R/o Kini Taluka Bhokar Dist.Nanded.
- 3) Chanderreddy s/o Narsareddy Yellawad,
Age 55 years, occupation Agriculture,
R/o Kini Taluka Bhokar Dist.Nanded.
- 4) Kantabi w/o Chanderreddy Yellawad,
Age 50 years, Occupation Agriculture,
R/o Kini Taluka Bhokar Dist.Nanded.
- 5) Abhishek s/o Chanderreddy Yellawad,
Age 32 years, Occupation Medical
Practitioner,
R/o Kini Taluka Bhokar Dist.Nanded.
- 6) Abhilash s/o Chanderreddy Yellawad,
Age 31 years, Occupation Agriculture,
R/o Kini Taluka Bhokar Dist.Nanded.
- 7) Nishita w/o Abhishek Yellawad,
Age 26 years, Occupation Household,
R/o Kini Taluka Bhokar Dist.Nanded.

- 8) Namita w/o Abhilash Yellawad,
Age 28 years, Occupation Household,
R/o Kini Taluka Bhokar Dist.Nanded.
- 9) Annapurna w/o Santosh Mehatre,
Age 28 years, Occupation Household,
R/o Kini Taluka Bhokar Dist.Nanded. **...Respondents.**

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Advocate for Petitioner : Mr. S. S. Gangakhedkar.
APP for Respondent No.1-State : Ms. P. V. Diggikar.

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CORAM : SMT.VIBHA KANKANWADI. J.
DATE : 09-12-2019.

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent, heard finally.
2. Present petition has been filed by the original informant victim challenging the order passed in Other Miscellaneous Criminal Application No.42 of 2019, dated 04-04-2019 by Judicial Magistrate, First Class, Bhokar, and order passed on 04-10-2019 by learned Additional Sessions Judge, Bhokar, in Criminal Revision Application No.07 of 2019.
3. Heard learned advocate Mr. S. S. Gangakhedkar for the petitioner and learned Additional Public Prosecutor Ms. P. V. Diggikar

for respondent No.1 – State. It is not necessary to issue notice to the other respondents taking into consideration the submissions and documents on record.

4. It has been vehemently submitted on behalf of the petitioner that, both the Courts below have not taken into consideration the facts as well as the urge of the informant that complete offence has not been investigated properly as against the accused persons. The informant had lodged report on 12-02-2019 alleging committal of offence under Section 366, 376 (2) (n), 506, 509, 114 of the Indian Penal Code against certain accused persons. Thereafter on 01-04-2019, she filed an application stating therein some other facts contending that, those facts revealed further offences and required thorough investigation. It was stated that, by cheating her and taking disadvantage of the false promises those were made, she was taken away and at that time she had taken amount of Rs.1,30,000/- and 15 Tolas of gold with her on the say of the accused persons. Her signature was obtained forcibly on certain papers and forged documents have been prepared regarding the marriage of the victim with one of the accused. It has been stated that, she had lodged the report but investigation in respect of cheating has not been done,

and therefore, she prayed that investigation should be directed. The learned Magistrate passed order that, since the matter is under investigation, the said application / complaint is prematured, and therefore, the application was rejected.

5. Being aggrieved by the said order, she had approached Additional Sessions Judge, and after hearing both sides, the revision application has been dismissed. It also appears that, in between the charge-sheet has been filed in which the additional sections have not been mentioned by police. The learned advocate for the petitioner submitted that, when investigation was required, it was not ordered. She was specific in her contention that, accused persons made her to take the amount as well as gold with her, and that amount and gold is still with the accused persons. In spite of getting knowledge of the same, Investigating Officer has not done anything, that amount and gold has not been seized. Therefore, necessary directions ought to have been given by the learned Magistrate under Section 156 (3) of Code of Criminal Procedure as against the respondents No.2 to 9 for the offences punishable under Section 420, 467, 468 read with 34 of the Indian Penal Code.

6. It is to be noted that, when the application was filed by the

informant on 01-04-2019 before the learned Magistrate, on the basis of her First Information Report, Crime No.35 of 2019 was registered and the investigation of the same was still pending. In her application she has not explained as to why she had not narrated all those details with which she has now mentioned in the application when the First Information Report was given. Perusal of the First information Report would show that, she had made a statement that the amount and gold has not been returned. If at all the evidence collected and from the charge-sheet those sections are attracted then definitely the competent Court would frame the charge, and to that extent since the case is exclusively triable by Court of Sessions, it has been specifically mentioned by the learned Additional Sessions Judge that he would take care of framing the charge against the accused persons. Under such circumstance, it was not necessary that any further direction under Section 156 (3) of Code of Criminal Procedure were required. Now as regards, why the amount and gold was not recovered, then re-investigation under Section 156 (3) of Code of Criminal procedure cannot be ordered.

7. Further it appears that, the informant intended to say that, some more persons ought to have been added as accused. Those

persons added by her in her revision application. The learned Additional Sessions Judge was justified in saying that, that is not the stage where addition of accused can be made under Section 319 of Code of Criminal Procedure. The procedure has been laid down and it can be undertaken even now also if the procedure is complete and as per the catena of Judgments in that respect. Merely because the amount and the gold has not been recovered, it cannot be stated that, any further action deserves. Further fact is required to be noted is that, on the day when the revision application was dismissed, a separate order has been passed by the learned Additional Sessions Judge as it appears from the record that the case was committed to the Court of Sessions. A specific order for framing charge under Section 406 of Indian Penal Code has been passed. Therefore, there is no substance in the present writ petition, hence it is dismissed. Rule is discharged.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.