

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

WRIT PETITION NO.4235 OF 2017

TARABAI SOMNATH KALE
VERSUS
CHIEF OFFICER, SANGAMNER MUNICIPAL COUNCIL
AND ANOTHER

...
Advocate for Petitioner : Mr. Nagargoje Ankush N.
Advocate for Respondent 2 : Mr. Shelke Shivaji T.

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CORAM : V.K. JADHAV, J.
Dated: February 21, 2020

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PER COURT :-

1. The learned counsel for the petitioner submits that the petitioner's mother-in-law died on 14.1.1944 and the Criminal Application No.326 of 2016 came to be filed before the learned Magistrate for recording the death. Learned counsel submits that, however, no documentary evidence is available about the date of death of mother-in-law of the petitioner. However, one Shri Sopan Damodhar Chutake r/o Sangamner, who was born in the year 1934 is having personal knowledge about the death of mother-in-law of the petitioner in the year 1944. Said witness is neighbour. Learned Magistrate has rejected the said
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application only on the ground that no documentary evidence is available specifying the particular date of death of mother-in-law of the petitioner and two different dates of death of mother-in-law of the petitioner have been brought on record. Learned counsel submits that, if the petitioner is permitted to examine the said witness Sopan Damodhar Chutake, who has also filed his affidavit to that effect before this Court vide Exh.F, page 25, purpose would be served and the petitioner may convince the learned Magistrate for issuance of the suitable directions for recording the death of mother-in-law of the petitioner in the concerned register.

2. Learned counsel appearing for respondent no.2 has raised objection for the same.

3. It appears that no documentary evidence is available about the exact date of death of mother-in-law of the petitioner. However, one witness is now available, who has personal knowledge about the death and year of the death of mother-in-law of the petitioner. Said

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witness was the neighbour. In view of the above, matter needs to be remanded to the learned Magistrate with certain conditions. Hence, I proceed to pass the following order.

O R D E R

- I. Writ Petition is hereby partly allowed.
- II. The impugned order dated 30.9.2016 passed by the Judicial Magistrate First Class, Sangamner in Criminal application No.326 of 2016 is hereby quashed and set aside.
- III. Matter is remanded to the learned Magistrate with the following conditions :-
 - a] The learned Magistrate shall restore the Criminal Application No.326 of 2016 to its original number.
 - b] The petitioner is permitted to lead the additional oral evidence in application criminal Application No.326 of 2016.

c] Learned Magistrate shall decide the Criminal Application No.326 of 2016 afresh after giving an opportunity of being heard to both the parties, on its own merits, on appreciation of the additional oral evidence, if adduced by the petitioner.

4. Writ Petition is accordingly disposed off.

(V.K. JADHAV, J.)

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