

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

932 CRIMINAL WRIT PETITION NO.142 OF 2021

Sangita Bhagchand Bhawale,
Age; 39 years, Occ; Government Service,
and H.H.
R/o; Manjula Colony, Near Railway Station,
Aurangabad.

...Petitioner

VERSUS

1. State of Maharashtra,
Through its Secretary,
Home Dept. Mantralaya,
Mumbai.
2. Commissioner of Police,
Mill Corner, Aurangabad.
3. Police Inspector,
(Dadasaheb Singare)
City Chowk, Police Station,
Aurangabad.
4. Inspector General of Police,
for State of Maharashtra,
Mumbai.
5. Sayyed Rajjoddin Nehari,
Age; 58 years, Occ; Profession,
R/o; Sahara Apartment,
Opp. Municipal Corporation Office,
Aurangabad.
6. Rajendra R. Jadhavar,
Age; 64 years, Occ; Profession,
R/o; Sundar Nagar, Nageshwarwadi,
Aurangabad, Tq. & Dist. Aurangabad.
7. Gurpreetsingh Gurunamsingh Pandher
Age; 45 years, Occ; Business,

R/o; Suryakiran Apartment, Behind
R.T.O. Office, Railway Station,
Aurangabad.

...Respondents.

...

Advocate for Petitioner : Mr.Surwase P.N.
APP for Respondents-State : Mr.S.N.Morampalle
Advocate for Respondent No. 5 : Mr.Ghanekar Nilesh S.
Advocate for Respondent No. 6 : Mr.Sohail Subhedar
Advocate for Respondent No. 7 : Mr.Kahalekar Kuldip S.

...

CORAM : SURENDRA P.TAVADE , J.

DATE : 21th August, 2021.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. With the consent of the parties and counsel for the parties heard finally at the admission stage.

2. The petitioner has filed a complaint before the trial Court for the offences punishable under Sections 376-D, 354, 397, 400, 506 and 166 (c) read with Section 34 of Indian Penal Code (for short "IPC"). She prayed for referring the complaint to police for investigation under Section 156 (3) of the Code of Criminal Procedure (for short "Cr.P.C."). The learned Judicial Magistrate First Class, Aurangabad rejected the prayer of the petitioner. The said order was challenged by the petitioner by filing Criminal Writ Petition No. 1045 of 2019. The Division Bench of this Court has observed that the

petitioner has not availed the forum available to her namely the Sessions Court, hence the petition was dismissed, with liberty to challenge the said order passed by the learned Magistrate before the Sessions Court. Accordingly, the petitioner has filed the Criminal Revision Application No. 242 of 2019. The said Revision Application was heard by the learned Additional Sessions Judge, Aurangabad and dismissed the same on the ground that the Division Bench of this Court has rejected the prayer of the petitioner in Criminal Writ Petition No. 1045 of 2019. Therefore, the Sessions Judge has simply dismissed the Revision Application without going into the merits of the matter. The said order is under challenge herein.

3. Heard the Mr. Survase, learned counsel for the petitioner, Mr.S.N.Morampalle, the learned APP for Respondents-State, Mr.Ghanekar Nilesh S., the learned counsel for Respondent No. 5, Mr.Sohail Subhedar, the learned counsel for Respondent No. 6 and Mr. Kahalekar Kuldip S., the learned counsel for Respondent No. 7.

4. Perused **the impugned order**, which reads as under :

“7) It appears from the record that complaint is filed before trial Court. As far as facts of the present case is concerned this revision is directed against the order of learned JMFC for rejecting the application U/s. 156 (3) of C.P.C. for investigation of rape on the complainant by

the accused. In this case it appears that complainant approached to the Hon'ble High Court and Hon'ble High Court has passed the order and observed that this order ought to have been challenged before Sessions Court by filing revision petition and thus rejecting the Writ Petition filed by the petitioner. As far as this aspect is concerned the same facts were narrated by the petitioner before the Hon'ble High Court and Hon'ble High Court has not considered this fact. As far as merit of the case is concerned whatever reasons when Hon'ble High Court rejected the revision therefore this Court cannot pass any order contrary to the order passed by the Hon'ble High Court. Therefore the same relief is sought in this revision petition. Therefore I am not convinced to entertain the revision petition. Therefore there is no substance in the contention raised by the revision petitioner. Therefore, the points are answered accordingly and pass the following order.

ORDER

- 1. Revision Petition is hereby dismissed.*
- 2. Inform the trial Court accordingly."*

5. Perused the **order of the Division Bench of this Court in Criminal Writ Petition No. 1045 of 2019**, wherein, this Court has simply observed that

"The proceeding is filed for relief of quashing and setting aside the order passed by the learned Judicial Magistrate, First Class, Aurangabad in Criminal Misc. Application No. 1113/2009 which was dismissed on 21.06.2019.

- 2. Heard learned counsel for the*

petitioner.

3. *The proceeding was filed by the present petitioner before the learned Judicial Magistrate, First Class for seeking direction against police to make investigation under Section 156 (3) of the Code of Criminal Procedure. The allegation of the offence of rape was made by the present petitioner and the learned Judicial Magistrate First Class has rejected the application. When such order is made, that order can be challenged by filing revision in Sessions Court. Learned counsel for the petitioner submitted that the present proceeding itself may be converted into revision and revision may be heard by this Court. This submission is also not acceptable. Propriety requires that Revision is filed in the Sessions Court and this Court is not expected to entertain the Revision when other recourse is not availed by the party. With these observations, the present proceeding is dismissed."*

6. On going through the order of this Court in Criminal Writ Petition No. 1045 of 2019, it appears that the petition was dismissed on the ground that the petitioner therein had forum to challenge the order namely Sessions Court. In view of the observations of this Court, it was expected from the learned Sessions Judge to decide the Criminal Revision Application filed by the petitioner on its own merits but the Sessions Court has simply read the order of the Division Bench of Court in Criminal Writ Petition No. 1045 of 2019 and passed the order mechanically. The order of the Judicial Magistrate

First Class is reasoned order, therefore, it is expected from the Sessions Court to hear the petitioner, as well as other sides on merits and pass the order, but instead of that the Sessions Court had taken a short cut and rejected the Revision Application, without considering the merits of the matter. Therefore, now, I have no option but to allow this petition and direct the learned Sessions Court, Aurangabad to decide the Criminal Revision Application No. 242 of 2019, on its own merits by hearing both the sides. Hence the following order :

ORDER

1. The petition is allowed.
2. The order passed by the Sessions Court, Aurangabad in Criminal Revision Application No. 242 of 2019 is hereby set aside.
3. The Sessions Court is directed to hear the parties and counsel and decide the said Criminal Revision Application on its own merit.
4. Rule is made absolute.

**(SURENDRA P.TAVADE)
JUDGE**