

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

943 WRIT PETITION NO.11113 OF 2021

**SHARADA AMBRUSHI JADE AND OTHERS
VERSUS
RAMCHANDRA BHASKAR KULKARNI ALIAS SUBHASH NARAYAN JAWALE**

...
Advocate for Petitioners : Mr. Patil Indrale Anand V.

**CORAM : MANGESH S. PATIL, J.
DATE : 05.10.2021.**

PER COURT :

Heard learned advocate for the petitioner. The petitioner is a party to a Reference under Land Acquisition Act, aggrieved by the order, operative part of which reads as under :

"28. In view of above undisputed facts and act of respondents No. 2 to 4, it is clear that, their acts come under the definition of fabricating the false evidence and cheating (defined under Section 192 and 415 of the I.P.C.), which are punishable under 193, 418, 420 of I.P.C.. Admittedly, Section 193 is against public justice, it's cognizance can only be taken by this Court under Section 195 of Code of Criminal Procedure, 1973. In view of above discussion, a cognizance of offence punishable under Section 193, 418 and 420 of the IPC is required to be taken against respondents No. 2 to 4 along with direction to file a complaint thereof.

29. In the result, following order is passed.

ORDER

- 1) The application is allowed with costs.
- 2) The respondents No. 2 to 4 are hereby directed to forthwith deposit the compensation amount Rs. 75,43,767/- (Seventy Five Lacs Forty Three Thousand Seven Hundred and Sixty Seven only), which had been withdrawn by them, within 8 days from today.
- 3) In event of failure, the Branch Manager of Osmanabad Janta Sahkari Bank Branch Bhoom, be directed by a letter to freeze the account No. 121004400020539 of respondents No. 2 to 4.
- 4) Superintendent of this Court is hereby directed to file criminal complaint against respondent (2) Sow. Shardha Ambarushi Jade, Age 62 years, Occ. Household, r/o. House No. 1870, Tulshiram Road, Barshi, Dist. Solapur, respondent (3) Meenakshi Ambarushi Jade, Age 42 years, Occu. Household, r/o. House No. 1870, Tulshiram Road, Barshi, Dist. Solapur and respondent No. (4) Urmila Utreshwar Potdar, Age 47 years, Occu. Household, r/o. House No. 1870, Tulshiram Road, Barshi, Dist. Solapur, under Section 193, 418 and 420 at Bhoom Police Station and report the compliance.
- 5) Copy of this order be given to the free of costs to respondents NO. 2 to 4.
- 6) True copy of this order be given to Superintendent of this Court for compliance.
- 7) Parties to note and comply forthwith.”

Though the learned Judge has no where referred to the provision under

which he was invoking the power for issuing direction to the Superintendent of his Court to lodge a criminal complaint against the petitioners, the observations made in the order particularly in paragraph No. 28 clearly indicate that he was intending to invoke the powers vested in him under Section 340 of the Code of Criminal Procedure in as much as, according to him the petitioners have *prima facie* committed an offence punishable under section 193, 418, 420 of the Indian Penal Code and by virtue of the provisions of Section 195 of the Code of Criminal Procedure it was imperative for him to direct a prosecution to be launched.

3. In view of such state of affairs, when the order apparently has been passed under Section 340 of the Code of Criminal Procedure, the remedy for the petitioners would be in the form of an appeal under Section 341 of the Code of Criminal Procedure and not by way of the Writ Petition.

4. The learned advocate for the petitioners, therefore, on instructions, seeks leave to convert the Writ Petition as an appeal under Section 341 of the Code of Criminal Procedure.

5. Leave is granted. Necessary amendment is allowed to be carried out.

(MANGESH S. PATIL, J.)

mkd/-