

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

905 CRIMINAL WRIT PETITION NO.1818 OF 2019
WITH CRIMINAL APPLICATION NO. 112 OF 2020

IN CRIMINAL WRIT PETITION NO. 1818 OF 2019

1. Shyamrao Kishanrao Khandelote
Age : major, occ : nil
2. Mohan Anandrao Waghmare
Age : major, occ : nil
R/o Ekta Nagar, Pawadewadi Road,
Nande.
3. Baswant Mukundrao Narwade
Age : major, occ : nil
R/o Bharat Nagar, Pawadewadi Naka,
Nanded.
4. Shaikh Wahaboddin Karimsab
Age : major, occ : nil
R/o Talegaon, Taluka Umri,
District Nanded.
5. Waman Maliarjun Kawale
Age : major, occ : nil
R/o Vaishali Nagar, Nanded.

Petitioners

Versus

1. The State of Maharashtra
Through Police Station, Umri,
District Nanded.
2. Ananda Kishanrao Khandelote
Age : 47 years, occ : agri.,
R/o Talegaon, Taluka Umri,
District Nanded.

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Mr. S.S. Gangakhedkar, Advocate for the petitioners.
Mr. R.B. Bagul, A.P.P. for respondent - State.

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CORAM : **SURENDRA P. TAVADE, , J.**

DATE : 13.08.2021.

JUDGMENT :

1. By this petition, the petitioners are challenging the order passed by the learned Judicial Magistrate, First Class, Umri, dated 27th September 2019, on Exh. 83 in R.C.C. No. 55/2014, thereby exhibiting the document which was apparently not before the Court.

2. It is contended that respondent No.2 had filed a complaint under Section 156 (3) of the Code of Criminal Procedure seeking prosecution against the petitioners under Section 420, 463, 464, 471 read with Section 34 of the Indian Penal Code. On investigation, charge-sheet came to be filed against the petitioners. After framing of the charge, on 12th July 2019 the prosecution examined original complainant Ananda Kishanrao Khandelote. During his examination-in-chief this witness was shown a copy of sale deed. He undertook to produce the original sale deed. On the basis of the said statement, original sale deed was given exhibit number as Exh. 88, in anticipation of it's production. On the next date, the witness produced on record original sale deed, which was given Exh.88.

3. On the basis of the above fact, it is submitted that the trial Court has given exhibit to the document which was not produced in the Court, but it was exhibited in anticipation of it's production. Learned Counsel for the petitioners submits that the

evidence recorded by the trial Court on 27th September 2019 is not proper and it is required to be quashed.

4. Learned A.P.P., on behalf of the State, submits that the trial Court has considered the certified copy of the sale deed in question and it was exhibited. He also concedes that the original sale deed was not produced on record, but it was exhibited in anticipation of its production. He further submitted that the said fact is ratified by the witness by producing the original sale deed subsequently and it was given exhibit. Therefore, the alleged irregularity has been rectified and the trial Court has taken on record the original sale deed and it was exhibited. Now the discrepancy is complied with, and therefore, there is no need to quash the evidence recorded on 29th September 2019.

5. Perused the evidence recorded by the trial Court of the respondent No. 2 on 12th July 2019. In para 20 of the said evidence it is mentioned that the witness was shown certified copy of the sale deed. He identified the same and he has assured that he will produce the original sale deed on the next date of hearing and in anticipation of its production, the trial Court has given exhibit to the said document. The said evidence was objected by the learned Counsel for the petitioners by submitting an application. The learned trial Court adjourned the matter on the basis of the said application.

6. On 27th September 2019, the trial Court has taken further examination-in-chief of the witness wherein he produced the original sale deed which was given exhibit. So it can be said that the

trial Court had committed error by giving exhibit to the document which was not on record, but on subsequent date the original sale deed was produced and it was given regular exhibit. So, it can be said that the error was corrected by the trial Court by taking the original sale deed on record.

7. The petitioner is praying for quashing the evidence recorded on 29th September 2019 which is not permissible, because as per the assurance given by the witness the document was taken on record which is the original sale deed. Therefore, the act of the learned Magistrate is a sort of corrective measure. In fact, he has committed error by giving exhibit number to the document which was not on record. But at the end it can be said that the Magistrate has corrected his error and given exhibit to the document which was produced before him.

8. In view of the above discussion, I do not find merit in the petition. The petition, is therefore, dismissed. Rule is discharged.

9. Criminal Application No. 112 of 2020 stands disposed of accordingly.

(SURENDRA P. TAVADE, J.)