

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 147 OF 2020

(Shantanu s/o Madhusudan Pande & Ors. Vs. State of Maharashtra & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A.M. Ghare, Advocate for the petitioners.
Mr. T.A. Mirza, A.P.P. for respondent Nos.1 to 5.
Mr. Tejas Deshpande h/f Mr. Firdos Mirza, Advocate
for respondent Nos. 6 and 7.

.....

CORAM : M.S. SONAK &
PUSHPA V. GANEDIWALA, JJ.
DECEMBER 02, 2021.

This petition has been filed seeking the
following reliefs :

“i) quash and set aside order dtd 03/11/18 passed by Judicial Magistrate First Class Umrer in Summary Criminal Case No. 731/2016 at Annexure – G – 1 and direct Respondent No.-3 to lodge de-novo prosecution of Respondent No 6 & 7 for commission of offence under S-188 of IPC in accordance with law i.e. S-145 & 195 of Code of Criminal Procedure.

ii) Direct the Respondent No.2 & 3 to promulgate their respective orders dtd. 01/06/2015 (Annexure A-1) in accordance with S-145(3) & (6) of Code of Criminal Procedure and 25/02/16 (Annexure-B) at conspicuous place near the place of dispute after removing any other boards displayed by Respondent No.6 & 7 and,

iii) Further direct Respondent No. 4 & 5 to register offence against Respondent No-6 & 7 for damaging public property i.e.

Govt. Nullah on 10/10/2014 and again on 5/11/17 in accordance with law and,

iv) be further pleased to direct Respondent No-4 Tahsildar Umrer to recover of cost of restoration of Nullah from Respondent No 6 & 7 as arrears of land revenue and same be paid to the petitioners.”

2] Insofar as relief in terms of prayer clause (i) is concerned, the learned counsel for respondent Nos. 6 & 7 points out that the order dated 03/11/2018 was challenged before this Court by filing a petition which was ultimately withdrawn without seeking any liberty to file a fresh petition. Mr. Ghare learned counsel for the petitioners states that this fact has been disclosed in the petition, and even an explanation has been offered. This fact has indeed been disclosed, but still, we are unable to understand how a fresh petition would be maintainable without any liberty in the order disposing of the earlier petition.

3] Be that as it may, we feel that as against the order dated 03/11/2018, the petitioners have remedies under the Code. Since such remedies are available, there is no case made out for exercise of our extraordinary jurisdiction under Article 226 or 227 of the Constitution of India. Therefore, we decline to grant relief in terms of prayer clause (i),

but at the same time, grant liberty to the petitioners to explore the remedies available under the Code. We also make it clear that all contentions of all the parties are kept intact.

4] Prayer clause (ii) concerns the promulgation of orders dated 01/06/2015 and 25/02/2016 in terms of the provisions of Sections 145(3) & (6) of the Code of Criminal Procedure. This petition was instituted on 12/02/2020 and not soon after these orders were made. The circumstance that some representations were made is not so relevant now that the proceedings themselves have been disposed of. Thus, we decline to grant any relief in terms of prayer clause (ii), firstly on the ground that such relief is barred by delay and secondly because the main proceedings have also been disposed of. However, if the petitioners feel that the order dated 03/11/2018 is rendered vulnerable on account of the alleged non-promulgation, then it is always open to the petitioners to urge this ground before the appropriate Court.

5] For the relief in terms of prayer clause (iii), the petitioners have again remedies under the Code, and there is no case made out for entertaining the petition. Therefore, the petitioners are free to avail all such remedies as are available under the Code.

6] Relief in terms of prayer clause (iv) can also not be granted in a Criminal Writ Petition. The learned counsel for the petitioners points out that there were earlier orders directing restoration, and the respondents are acting in breach of the same. If that is so, it is open to the petitioners to take out appropriate proceedings alleging breach of our orders, but there is no question of filing a fresh petition of this nature.

7] For all the aforesaid reasons, we dispose of this petition with liberties as aforesaid. There shall be no order for costs.

8] We further clarify that nothing in this order is intended to even remotely affect the remedies that the petitioners might have under the Code or before the Civil Courts, and therefore, if the petitioners avail such remedies, the appropriate Courts or authorities need not be influenced by the observations made herein.

(PUSHPA V. GANEDIWALA, J.) (M.S. SONAK, J.)

Sumit