

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

CRIMINAL WRIT PETITION NO. 186 OF 2021

(Bharti w/o Yogesh Lokhande & Ors. Vs. The State of Maharashtra & Anr.)

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

Court's or Judge's orders.

Mr. Amit Khare, Advocate for the petitioners.
Mr. T.A. Mirza, A.P.P. for the respondents/ State.

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CORAM : M.S. SONAK &
PUSHPA V. GANEDIWALA, JJ.
NOVEMBER 17, 2021.

Heard Mr. Khare, learned counsel for the petitioners, and Mr. Mirza learned A.P.P. for the respondents.

2] This petition was instituted seeking the following reliefs :

“i. By a writ of mandamus or any other appropriate writ, order or direction, direct respondent number one in 2 to take cognizance of the complaint dated 14/01/2021 filed by the petitioner number one, it having made out cognizable offences and take appropriate action in accordance with law.

ii. by an appropriate order or direction, direct the respondents to take into their custody the original Will, which is in

possession of Lokesh Raipure and send it for forensic examination by a government recognized expert;”

3] Respondent No.1 has filed a detailed affidavit in this matter indicating the extent of investigations carried out and the inferences drawn therefrom. In para 9, it is submitted that after the investigations, the agencies have concluded that no *prima-facie* cognizable offense has been made out.

4] Paragraph 9 of the affidavit filed by Shri Sunil Sonawane on behalf of respondent No.1 reads as follows :

“9. It is further submitted that the Inquiry Officer after conducting the enquiry came to be conclusion that no prima facie cognizable offence set to have been made out on the complaint made by respondent No.3, the witnesses have stated that Late Nandram Raipure has put his signature on the said Will and other persons concerning with the Will has stated that the said Will was prepared by Late Nandram Raipure and put his signature, in view of the same as no cognizable offence can be set to have been made out. On the said complaint the Inquiry Officer has file the said complaint and there was no need to register the offence and accordingly, the information

was also given to the complainant/respondent No.3 that on the basis of the complaint she has lodged no cognizable offence has been constituted. That the concerned persons and witnesses have stated that Late Nandram Raipure himself signed on the said Will in presence of witnesses and his medical condition was also duly ascertained by the Doctor and Advocate of the Notary has notarized the documents also testified about the preparation of will putting his signature by the concerned persons and the witnesses thereof. In view of the aforesaid, no offence was registered. The enquiry was conducted by the Inquiry officer in most expeditious manner. Hence, the petition may kindly be dismissed.”

5] Mr. Khare, however, submits that having regard to the allegations made in the complaint, the Investigating Agencies should have obtained a report from the hand-writing expert as to whether the signature on the disputed will was indeed that of late Nandram Raipure. He submits that since this is not done, further directions ought to issue to the respondents to undertake this exercise.

6] According to us, in the facts of the present case, no such direction is liable to issue. This

is because the affidavit indicates that investigations have been carried out and even statements of several witnesses have been recorded. Besides, if the petitioners are dissatisfied with the investigation, the petitioners have their remedies both under the provisions of the Code of Criminal Procedure as well as the usual civil remedies. Merely because the civil remedies may be time-consuming, there is no scope for short-circuiting the same by involving the police machinery in what might ultimately turn out to be a civil dispute.

7] For the aforesaid reasons and having regard to the reply filed on behalf of respondent No.1, we decline to entertain this petition. However, we make it clear that the observations herein are only in the context of the reliefs sought for in this petition, and such observations are not intended to even remotely affect any other remedies that the petitioners might have concerning the issue in question.

8] With this clarification and liberties, this petition is dismissed. There shall be no order for costs.

(PUSHPA V. GANEDIWALA, J.)

(M.S. SONAK, J.)

Sumit