

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

Criminal Application (APL) No. 708 of 2015

- (1) Umesh S/o Kisan Bore
Aged abt – 29 yrs, Occ – Agri
- (2) Nilesh S/o Kisan Bore
Aged abt – 26 yrs, Occ – Agri
- (3) Mangla Wd/o Kisan Bore
Aged abt – 50 yrs, Occ – Household
- (4) Kamlabai W/o Dnyandeo Bore
Aged abt – 50 yrs, Occ – Household
All R/o Gharod Tq. Khamgaon
Dist – Buldana

..... Applicants

.. Versus ..

- (1) Laxman S/o Vasantryao Sange
Aged abt – 50 yrs, Occ – Agri
R/o Vivra, Tq – Patur, Dist – Akola
- (2) State of Maharashtra,
Through Public Prosecutor,
High Court, Nagpur

..... Non-applicants

Mr. A. M. Tirukh, Advocate for the applicant
Mr. A. S. Thotange, Advocate for non-applicant no. 1
Mr. N. R. Rode, APP for non-applicant no. 2

CORAM : ROHIT B. DEO, J.

DATED : 14-01-2021

ORAL JUDGMENT

This application invokes the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Code).

2. Facts are few and brief.
3. Applicant 1 Mr. Umesh Bore was the legally wedded husband of Mrs. Monika, the daughter of non-applicant 1 Mr. Laxman Sange.
4. Mrs. Monika allegedly met with an unnatural death.
5. Mr. Laxman lodged report on the basis of which offences punishable under Sections 498-A and 304-B read with Section 34 of the Indian Penal Code (IPC) were registered. Culmination of investigation led to submission of final report against Mr. Umesh Bore and the applicants 2 to 4. It is common ground that the trial is yet to conclude.
6. Mr. Laxman Sange instituted complaint RCC 139/2012 seeking the prosecution of the applicants under Section 406 read with Section 34 of the IPC. The complaint is founded on the allegation that after the demise of Mrs. Monika, the accused- applicants herein refused to handover the *stridhan* to the complainant Mr. Laxman Sange.
7. The applicants unsuccessfully approached the learned Sessions Judge in an appeal to quash the process issued by the learned Magistrate.
8. Shri Tirukh would submit that unless the trial ends in conviction, applicant 1 Mr. Umesh Bore would legitimately be Class – I legal heir and, therefore, even if it is assumed that he refused to handover the alleged *stridhan* to his father-in-law, no offence punishable under Section 406 is made out.
9. I see considerable force in the said submission.

10. It is common ground that the trial is pending. The cause of action to allege commission of offence under Section 406 of the IPC would arise, if at all, only if Mr. Umesh Bore is convicted of murder or having abetted the commission of murder, as is the mandate of Section 25 of the Hindu Succession Act, 1956. It is common ground that Mr. Umesh is charged under Section 304-B of IPC. Since the trial is ongoing, I need not make any observation on the possibility of conversion or alteration of charge. However, even if it is assumed *arguendo* that at a later stage, Section 25 of the Hindu Succession Act, 1956 may come into play, presently, the ingredients of Section 406 IPC is not made out.

11. It is clarified that the complainant Mr. Laxman Sange shall be at liberty to prefer appropriate complaint if the result of the trial or finding recorded therein furnish a cause to so do.

12. Subject to the aforesaid observations and liberty, the application is allowed in terms of prayer clause (a) which reads thus :

- (a) allow the present application and thereby quash and set aside the impugned order dated 25-08-2015 passed by learned Addl. Sessions Judge Akola in Criminal revision 141/2014 (Annexure-A) as well as the order dated 13-12-2013 passed by learned J.M.F.C. Patur below exhibit one in R.C.C. 139/2012 (Annexure-C).

JUDGE

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