

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

CRIMINAL WRIT PETITION NO. 42 OF 2022

Bapu Shankar Dighe

..PETITIONER

VERSUS

Radhakrishna Eknath @ Balasaheb Vikhe Patil
and Others

..RESPONDENTS

....
Ms. P.S. Talekar, Advocate for petitioner
Mr. S.P. Sonpawale, A.P.P. for respondent no.7 - State
....

**CORAM : R.G. AVACHAT, J.
DATED : 18th FEBRUARY, 2022**

PER COURT :

1. This petition has been filed challenging order dated 05th March, 2020 passed by learned Additional Sessions Judge, Kopargaon in Criminal Revision Application No. 36 of 2019 upholding order dated 16th February, 2019 passed by learned Judicial Magistrate First Class, Rahata rejecting the petitioner's prayer for recall of witness - Kavita Aher for examination only with a view to correct the mistakes crept in her statement recorded on oath by the learned J.M.F.C., Rahata on 13th March, 2018.

2. Heard.

3. The petitioner herein has filed a complaint (case instituted otherwise on police report) for the offences exclusively tried by a Court of Session. During enquiry under Section 202 of Code of Criminal Procedure, some witnesses came to be examined on oath. One of them is Kavita Aher, Village Development Officer, Loni. Date of death alongwith death certificate of one Keshav Ramakant Kulkarni was sought to be brought on record on examining this witness. The record indicates that there were two death certificates in the name of Keshav Ramakant Kulkarni showing two different dates of death such as 03rd April, 2012 and 07th April, 2012. In earlier part of her examination, the witness was shown death certificate dated 07th April, 2012. She acknowledged the same to have been issued by her office. Further part of her examination does indicate that learned counsel for the complainant wanted to bring on record another death certificate showing the date of death as 03rd April, 2012. On the same lines the questions were put to her. It however appears that inadvertently in 4th/5th line from the bottom of her statement the date 07th April, 2012 has been recorded. Same appears to be the mistake. This Court could have directed to rectify the same. Said statement has however been recorded under the signature of witness - Kavita Aher.

4. It is brought to the notice of this Court by learned A.P.P. that death certificate disclosing the date of death 03rd April, 2012 has now been

corrected showing it to be 07th April, 2012. Be that as it may, the statement on oath, under the signature of the witness would remain as it is, if she is not recalled for correction therein.

5. In this factual backdrop, both the Courts below had erred in not granting the petitioner's request to recall the said witness. The orders impugned herein are, therefore, set aside by allowing the writ petition with direction to learned J.M.F.C., Rahata to recall the witness - Kavita Aher for her examination on oath only to the extent of rectification of the mistake, stated herein above, crept in her statement on oath dated 13th March, 2018.

6. Criminal writ petition stands disposed of accordingly.

(R.G. AVACHAT, J.)

SSD