

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 278 OF 2022

Salma Bano @ Farha Yasmeen
W/o Shaikh Mohsin

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr Rameez M. Shaikh, Advocate for Petitioner
Mr P.G. Borade, APP for Respondent No.1/State
Mr M.S. Choudhary, Advocate for Respondent Nos. 2 to 7

CORAM : SHRIKANT D. KULKARNI, J.
DATE : 20th AUGUST, 2022

PER COURT :

1. The petitioner has challenged the order of rejection of prayer of direction for investigation through Police under section 156(3) of Cr.PC by the JMFC Court, Ambad dated 28th October, 2021 which is upheld by the Additional Sessions Judge, Ambad, Dist. Jalna.
2. Heard Mr Rameez M. Shaikh, learned counsel for the petitioner, Mr P.G. Borade, learned APP for the State and Mr M.S. Choudhary, learned counsel for respondent Nos. 2 to 7.
3. Perused the impugned order passed by the learned JMFC, Ambad below Exh. 1 in Criminal Misc. Application No. 188/2021 whereby prayer for Police investigation under section 156(3) of Cr.PC came to be turned down at the hands of the JMFC, Ambad.
4. Perused the Judgment and order passed by the learned Additional Sessions Judge, Ambad in Criminal Revision Application No. 65/2021 whereby revision came to be dismissed.

5. Mr Rameez Shaikh, learned counsel for the petitioner invited my attention to the impugned orders passed by the learned JMFC and Additional Sessions Judge and submitted that both the courts below have committed an error in the eye of law in refusing prayer for Police investigation under section 156(3) of Cr.PC. He submitted that respondent Nos. 2 to 7 have misrepresented before the Civil Court in the proceedings for legal heirship certificate.

6. Mr Haji Makbool Hasan s/o. Noor Mohammed resident of Jamner, Tal. Ambad has left behind two heirs (daughters) one Fayyaz Begum w/o. Mohammed Isak and Salimunnisa Begum w/o. Mohammed Ibrahim. Respondent Nos. 2 to 7 misrepresented said fact and shown only one daughter named Fayyaz Begum w/o. Mohammed Isak in the proceedings of heirship certificate and thereby committed fraud on the court and offence of cheating. He therefore submitted that it is very much necessary to investigate through Police having regard to the nature of offences and allegations. He therefore, urged that both the orders are liable to be quashed and set aside and the case may be forwarded to the concerned Police Station for investigation under section 156(3) of Cr.PC.

7. Mr P.G. Borade, learned APP for the State supported both the impugned orders passed by the courts below.

8. Mr M.S. Choudhary, learned counsel for respondent Nos. 2 to 7 also supported the order passed by the learned JMFC which is upheld at the hands of learned Additional Sessions Judge, Ambad in the revision

proceedings. He submitted that no interference is required since proceedings of legal heirship certificate is still subjudiced before the Civil Court.

9. I have considered the submissions of both the sides. It is the discretion of the Judicial Magistrate First Class which mode should be exercised for enquiry or investigation of a complaint. It is for the Judicial Magistrate First Class to apply his judicial mind to the facts of the case and pass appropriate order accordingly. Let me find whether the Judicial Magistrate First Class has used his judicial discretion by applying his judicial mind.

10. On going through the order below Exh. 1 in Criminal Misc. No. 188/2021 by the JMFC, Ambad in para No. 7, it would reveal that the learned Magistrate has applied his judicial mind. The learned Magistrate has observed that alleged offences are based upon documentary evidence. Almost all documents are on record and in that background observed that investigation through Police is not required. By making such observations, learned Magistrate was pleased to turn down the prayer under section 156(3) of Cr.PC. That order has been upheld by the learned Additional Sessions Judge, Amabad in the revision. On careful study of both the impugned orders, I do not see any error on the part of the learned Magistrate as well as learned Additional Sessions Judge, Ambad. It is clear after perusing both the orders passed by the courts below that the learned Magistrate has applied his judicial mind and used his discretion judiciously and turned down prayer of investigation through Police under

section 156 (3) of Cr.PC. It is not the right of the party to seek for Police investigation under section 156(3) of Cr.PC. In the instant case, it is very much evident that the learned Magistrate has applied his judicial mind and accordingly turned down the prayer by recording sufficient reasons. There is no error on the part of the learned Magistrate while refusing the prayer for Police investigation under section 156(3) of Cr.PC. No interference is called for in the impugned orders passed by the respective courts. There is no merit in the petition.

ORDER

- (i) The Criminal Writ Petition stands dismissed.
- (ii) No order as to costs.

[SHRIKANT D. KULKARNI, J.]

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