

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

**CRIMINAL WRIT PETITION NO.1902 OF 2019**

Sangram S/o Lotan Marathe,  
Age-51 years, Occu:Service and Agril.,  
R/o-Ambewadgaon, Tq-Pachora,  
Dist-Jalgaon, Now at present,  
R/o-Plot No.11, N-8, Savdhan Co-op  
Hsg. Society, Sawarkar Chowk,  
CIDCO, Aurangabad.

**...PETITIONER**

**VERSUS**

- 1) Kadu S/o Mahadu Marathe,  
Age-68 years, Occu:Agril.,
- 2) Santosh S/o Mahadu Marathe,  
Age-64 years, Occu:Agril.,
- 3) Mohan S/o Mahadu Marathe,  
Age-61 years, Occu:Agril.,
- 4) Vishwash S/o Mahadu Marathe,  
Age-58 years, Occu:Agril.,
- 5) Satish S/o Mahadu Marathe,  
Age-28 years, Occu:Agril.,
- 6) Amol S/o Mahadu Marathe,  
Age-31 years, Occu:Agril.,

Respondent Nos.1 to 6 are resident of  
At Post-Ambewadgaon, Tq-Pachora,  
Dist-Jalgaon,

- 7) Sau. Lilabai Kashinath Dubale,  
Age-61 years, Occu:Household, At Post-  
Deodhaba, Tq-Malkapur, Dist-Buldhana,

- 8) Sandip S/o Mohan Marathe,  
Age-31 years, Occu:Agril.,
- 9) Pradip S/o Mohan Marathe,  
Age-36 years, Occu:Agril.,
- 10) Sau Nirmalabai Mohan Marathe,  
Age-74 years, Occu:Agril.,

Respondent Nos.8 to 10 R/o-  
At-Post-Ambewadgaon, Tq-Pachora,  
Dist-Jalgaon,

- 11) The Talathi,  
Talathi Office, Vadgaon Ambe,  
Tq-Pachora, Dist-Jalgaon,
- 12) The Talathi,  
Talathi Office, Kokadi Tanda,  
Tq-Pachora, Dist-Jalgaon,
- 13) Divisional Officer,  
Hareshwar Pimpalgaon,  
Tq-Pachora, Dist-Jalgaon,
- 14) Govinda S/o Mahadu Patil,  
Age-Major, Occu:Labourer,  
R/o-Lohari, Tq-Pachora,  
Dist-Jalgaon.

**...RESPONDENTS**

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Mr.Vijay Y. Patil Advocate for Petitioner.  
Ms.S.N. Devmane (Munde) Advocate h/f. Mr.G.V. Wani  
Advocate for Respondent Nos.1 to 6, 8 and 9.  
Mr.S.P. Deshmukh, APP for Respondent – State.

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**CORAM: SMT. VIBHA KANKANWADI, J.**

**DATE : 15<sup>th</sup> JUNE, 2022**

**ORDER :**

1. Present Writ Petition has been filed by the son of the original complainant invoking the constitutional powers of this Court under Article 227 of the Constitution of India for setting aside the order passed by the learned Judicial Magistrate First Class, Pachora, District-Jalgaon below Exhibit-20 in R.C.C. No.143 of 2019 dated 13<sup>th</sup> February 2019, thereby rejecting the application filed by the present petitioner for allowing him to continue the prosecution in place of his father who is stated to be expired on 29<sup>th</sup> September 2017.

2. Heard learned Advocate for the Petitioner and learned Advocate appearing for respondent Nos. 1 to 6, 8 and 9, and learned APP for State.

3. Taking into consideration the limited point involved in this case, it is only to be mentioned that the original complainant Lotan Mahadu Marathe filed R.C.C. No.143 of 2013 before the learned Judicial Magistrate First Class, Pachora against about 14 persons contending that they have committed offence punishable under Sections 420, 465, 467, 468, 469, 471, 109, 120-B of the Indian Penal Code. It is to be noted that verification was

recorded by the concerned Magistrate on 6<sup>th</sup> September 2013 and on the same day, it appears that, he had called for the report under Section 202 of the Code of Criminal Procedure (for short "Cr.P.C."). Thereafter at Exhibit-20 the present petitioner filed an application on 16<sup>th</sup> February 2019 stating that his father has expired on 29<sup>th</sup> September 2017 and he be allowed to continue the prosecution.

4. The learned Magistrate heard the learned Advocate for the complainant and then took note of the fact that the death certificate has not been produced on record. The complainant had relied on the decision in ***Bhag Singh vs. State of Punjab, 2001 CRI. L.J. 2997*** by the Hon'ble Punjab and Haryana High Court on the point that criminal case does not get abated on the death of the complainant and Section 256 of Cr.P.C. empowers the Court to permit the fit and proper person to continue the prosecution on the death of the complainant. Though the learned Magistrate has accepted this proposition of law, yet he has stated that the applicant has failed to convince the Court regarding death of his father. In fact a Magistrate cannot be too technical in his approach. When the Magistrate is supposed to do the justice then he cannot undermine his own powers. Definitely

when such application is filed, then he has the power to make an inquiry into the contents of the application. Independently, he could have verified as to whether the complainant is expired. It is not necessary that only the son of the complainant should have produced the death extract. By issuing notice to the original complainant, it could have been brought on record through Police, as to whether the original complainant is alive or not. This kind of too technical approach rather buries the justice. Further, when the decision by the High Court was cited wherein it was specifically stated that Section 256 of Cr.P.C. empowers the Court to permit the fit and proper person to continue the prosecution on the death of the complainant, it can be seen that the Hon'ble Punjab and Haryana High Court intended to say that if desired the Magistrate can hold an inquiry, as to whether the applicant, who is coming before the Court for substitution of the original complainant, is fit and proper person or not and whether the statement made by him that the original complainant has expired is correct or not. It is to be noted that the private complaint was filed in the year 2013. As observed above, after the verification on 6<sup>th</sup> September 2013 itself report under Section 202 of Cr.P.C. was called and from the order below Exhibit-20 it does not appear that even on 13<sup>th</sup> September 2019 i.e. on the

day on which that application was decided, that report had reached to the concerned Magistrate, because there is absolutely no reference to the same in the order. The original complainant had expired on 29<sup>th</sup> September 2017 and after about two years the application Exhibit-20 was filed. By any source the fact about death of the complainant had not reached the Court and therefore, the Magistrate could have definitely called for the report from the police and / or could have directed the present petitioner to produce the death extract. At the cost of repetition, it can be said that the Magistrates are having wide powers under Cr.P.C. and they are expected to use their powers in a given case and they cannot afford to be too technical. Such order cannot be allowed to sustain and it deserves to be set aside with further directions that the concerned Magistrate may allow the present petitioner to produce on record the death certificate of the original complainant. In fact the copy of the same is now produced in the Writ Petition. However, it should be before the concerned Court and also the concerned Magistrate to see that the police gives the report under Section 202 of the Cr.P.C. and also to consider the application Exhibit-20 on its own merits thereafter. With these observations, following order is passed:-

**O R D E R**

(I) The Writ Petition stands allowed.

(II) The order passed below Exhibit-20 in Regular Criminal Case No.143 of 2013 by the learned Judicial Magistrate First Class, Pachora on 13<sup>th</sup> September 2019 is hereby set aside.

(III) If a final order is passed regarding disposal of the Regular Criminal Case, then the Case should be restored to the file by the learned Magistrate and the learned Magistrate to decide Exhibit-20 on its own merits by allowing the applicant therein to file on record the death certificate of the original complainant and taking up the further proceedings as per the law.

**[ SMT. VIBHA KANKANWADI , J. ]**