

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 6059 OF 2021

Shri. Ajit Ankush Jori

...Petitioner

Versus

The State of Maharashtra And Anr.

...Respondents

Mr. Vishwajit P. Sawant, Senior Advocate a/w Prabhakar M. Jadhav,
Advocate for Petitioner.

Mr. Arfan Sait, APP for the Respondent–State.

CORAM : PRAKASH D. NAIK, J.

DATE : 19th JULY, 2022.

PER COURT:-

1. The Petitioner has challenged the order dated 14th October, 2021 passed by Additional Sessions Judge, Pune in Criminal Revision Application No.180 of 2021 arising out of order dated 20th March, 2021 passed by Judicial Magistrate First Class, Paud Court, Pune in Criminal M.A. No.2366 of 2020. The Petitioner is seeking direction to Respondent No.2 to register and record death of his mother Smt. Leela Ankush Jori.

2. The brief facts as contended by the Petitioner are as follows :

a) The Petitioner is son of Late. Smt. Leela Ankush Jori.

b) The Petitioner filed an application viz. Criminal M.A. No. 2366 of 2020 on 27th August, 2020 under Section 13(3) of the Registration of Birth and Deaths Act, 1969 before Judicial

SUNNY
ANKUSHRAO
THOTE
Digitally signed
by SUNNY
ANKUSHRAO
THOTE
Date:
2023.04.11
18:38:04 +0530

Magistrate First Class, Paud, Pune for issuing directions to register death of his mother in records of Grampanchayat Shedani.

c) The Petitioner is resident of village Bhadas, Tq. Mulshi, Dist. Pune.

d) Smt. Leela Ankush Jori died on 3rd July, 1997 at village Shedani, Tq. Mulshi, Dist. Pune. Her father Late. Shri. Bapu Dagdu Padwal was residing in village Shedani which is close to village Bhadas. Death of Smt. Leela Ankush Jori was not registered in Grampanchayat records within prescribed period.

e) The Petitioner is the only legal heir of Late. Smt. Leela Ankush Jori. The father of Petitioner Late Shri. Ankush Baban Jori has expired on 14th May, 1999.

f) Learned J.M.F.C. by order dated 19th September, 2020 had issued directions to issue public notice in the local daily marathi newspaper, which was published in 'Punya Nagari' on 29th September, 2020 and citation in the Grampanchayat office. No one had objected to the same.

g) Learned J.M.F.C. passed order dated 19th January, 2021 on Exh.1 directing that the Petitioner to examine other two independent witnesses who attended funeral formalities.

h) As per the order dated 19th January, 2021, the

Petitioner produced two affidavits of Mr. Ananta Devaji Gawde and Mr. Baban Shankar Jori. Both the witnesses stated that, they were present at the funeral of Smt. Leela Ankush Jori.

i) Vide order dated 20th March, 2021, the learned Magistrate rejected the application preferred by the Petitioner.

j) The Petitioner preferred Criminal Revision Application No.180 of 2021 challenging order dated 20th March, 2021 before the Sessions Court, Pune.

k) The learned Sessions Judge by order dated 14th October, 2021 rejected the revision application.

3. Learned Advocate for the Petitioner submitted that, the impugned orders are contrary to law. The Application under Section 13(3) of the Registration of Birth and Deaths Act, 1969 was rejected by the Courts on extraneous grounds not supported by facts and law. The Courts have failed to appreciate facts and documentary evidence on record. The Petitioner filed two affidavits of independent witnesses in compliance of order dated 19th January, 2021 passed by learned Judicial Magistrate First Class, Paud, Pune. In spite of complying the said order the application was rejected. The Petitioner came to know about death of his mother from grandparents, other relatives and neighbours and it

was an error by the Court to conclude that the Petitioner was only five years old when his mother died and hence he could not have known the date of his mother's death. The learned Magistrate has committed a mistake while concluding that Ananta and Baban's Affidavit did not mention their relation with deceased, Smt. Leela Ankush Jori. The affidavits were exactly as per order dated 19th January, 2021 passed by Court. The learned Sessions Judge has mechanically rejected the revision application. The Petitioner has placed on record affidavit of Smt. Indubai Baban Jori. She is the grandmother of Petitioner and mother-in-law of Smt. Leela Ankush Jori. She was present at the funeral of Smt. Leela Jori.

4. Learned APP submitted that, there are two concurrent orders rejecting the relief sought by the Petitioner. The learned J.M.F.C. had assigned reasons for rejecting the application under Section 13(3) of the said Act. The learned Magistrate discarded the affidavits relied upon by the Petitioner by assigning reasons. The Petitioner has failed to produce the authentic record to establish the date of death of Smt. Leela Jori. The Sessions Court has rightly rejected the revision application. No case is made out to interfere in the impugned orders. The affidavit of mother-in-law of the deceased was not produced before the Courts below. It was produced for the first time before this Court. Hence, the petition may be

rejected.

5. According to Petitioner his mother Smt. Leela Ankush Jori died on 3rd July, 1997 at village Shedani, Tq. Mulshi, Dist. Pune. Her death was not registered with concerned Grampanchayat. Hence, the Petitioner preferred an application under Section 13(3) of the Registration of Birth and Deaths Act, 1969. In the application it was stated that Petitioner's mother Smt. Leela Ankush Jori had died on 3rd July, 1997 at village, Mouje Shedani, Tq. Mulshi, Dist. Pune. The death was not registered within one year. The group Grampanchayat Shedani has issued certificate that death of Smt. Leela Ankush Jori has not been registered with said Grampanchayat. Death certificate is required for the purpose of making entries as legal heir of agricultural land owned by his mother. He is the son of Late Smt. Leela Ankush Jori and there are no other legal heirs to her. Husband Ankush Baban Jori has expired on 14th May, 1999. The application was supported by affidavit of Petitioner dated 18th February, 2020 reiterating contents of application. Alongwith application the Petitioner had enclosed photocopy of mutation entry no.296 relating to land at Mouje Shedani, Tq. Mulshi, School leaving certificate of Petitioner dated 1st August, 2012, certificate issued by Grampanchayat Shedani, PAN Card/Aadhar Card of Petitioner and death certificate of Ankush

Baban Jori. Vide order dated 19th September, 2020 the learned Magistrate issued show cause notice and citation in Grampanchayat Office and paper publication. Copy of citation notice and paper publication dated 29th September, 2020 has been annexed to the Petition. Vide order dated 17th December, 2020, passed by learned Magistrate it was recorded that no one has appeared despite paper publication and issuance of notice calling upon objections. Hence, application be proceeded *ex-parte* The application was heard on 20th March, 2021. Vide order dated 19th October, 2021 it was observed that, as the applicant was a person of tender age on the date of alleged death, applicant to examine other two independent witnesses who attended funeral. The Petitioner filed affidavit of Ananta Gawde dated 27th January, 2021 and Baban Shankar Jori dated 27th January, 2021. Application was rejected vide order dated 20th March, 2021. The revision application challenging the said order was rejected by order dated 14th January, 2021.

6. Section 13 relates to delayed registration of birth and deaths. Sub-section 3 of Section 13 provides that any birth or death which has not been registered within one year of its occurrence shall be registered only on an order made by Magistrate of the First Class or Presidency Magistrate after verifying the correctness of birth and death and on payment of prescribed fee.

7. It is not disputed that, Smt. Leela Ankush Jori is the mother of Petitioner. In accordance with order dated 19th September, 2020 passed by learned J.M.F.C. directing issuance of public notice in the local daily marathi newspaper, public notice was published in the news paper Punya Nagari on 29th September, 2020 with a citation in the Grampanchayat office. The orders passed by Court indicate that no one came forward with any objection with regard to claim of Petitioner. The fact that, Petitioner is the only surviving legal heir of Smt. Leela Ankush Jori was not disputed by any person. The proceedings were conducted *ex-parte*. The certificate issued by group Grampanchayat dated 7th December, 2019 mentions that, parental home of Late Smt. Leela Ankush Jori is Shedani, Gavthan, Tq. Mulashi, Dist. Pune. She died at Mouje Shedani on 3rd July, 1997. Her death is not registered in the office of Grampanchayat which fact has been stated by Ajit Ankush Jori in his application. The Petitioner had relied upon death certificate Shri. Ankush Jori (father of Petitioner), school leaving certificate of Petitioner, letter from Gramsevak Shedani, 7/12 extract and mutation of lands at village Shedani. In compliance with order the Petitioner had produced affidavits of Mr. Ananta Devaji Gawde and Mr. Baban Shankar Jori. Both the witnesses have stated that, they were present at the funeral of Late. Smt. Leela

Ankush Jori. The learned Magistrate however ignored the said affidavits on the grounds that, the affidavit does not mention the relations of the deponent with deceased and it is not possible for Petitioner to remember date of death of his mother. It is pertinent to note that the Petitioner was directed to file affidavits of two independent witnesses, who attended funeral of Smt. Leela Jori. The question of disclosing their relationship with deceased does not arise. The witness Ananta Gawde has stated that, he is the resident of Bhadas, Tq. Mulshi, Dist. Pune. Matrimonial home of Smt. Leela Ankush Jori was at Bhadas. She died on 3rd July, 1997 at Shedani, Tq. Mulshi, Dist. Pune. At that point of time he was residing in the said village. Her funeral was performed at Shedani, Tq. Mulshi, Dist. Pune and that he was present at the funeral. Similar affidavit was affirmed by Shri. Baban Shankar Jori. Both the witnesses have categorically stated that, they are the villagers of village Shedani. In these circumstances, there was no reason to discard their affidavits on the ground that, they have not mentioned the relations with deceased. The affidavits of witnesses were in consonance with order passed by the Court. The reasoning is erroneous. Order dated 20th March, 2022 also refers to the ground of rejection that the Petitioner would be aged around five years at the time of death of his mother and it is difficult to accept that he

knows the date of death of his mother. Assuming that the Petitioner was aged around five years at the time of death of his mother, the fact that she died on 3rd July, 1997 could be gathered from his close relations and other persons. Considering several documents on record, the Court ought not to have rejected the application. Learned Sessions Judge has rejected the revision application by concurring with the order passed by learned J.M.F.C. The order of Sessions Court is apparently mechanical.

8. In the light of documentary evidence produced by the Petitioner the prayer for registration of death of Petitioner's mother Late. Smt. Leela Ankush Jori can be granted.

ORDER

- i. Criminal Writ Petition No.6059 of 2021 is allowed and disposed off.
- ii. The impugned order dated 20th March, 2021 passed by Judicial Magistrate First Class, Paud, Pune in Criminal M.A. No.2366 of 2020 and order dated 14th October, 2021 passed by Additional Sessions Judge, Pune in Criminal Revision Application No.180 of 2021 are quashed and set aside.
- iii. Respondent No.2 Gramsevak Panchayat, Shedani is directed to register and record death of Late. Smt. Leela

Ankush Jori within a period of four weeks from date of receipt of this order.

[PRAKASH D. NAIK, J.]