

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

CRIMINAL WRIT PETITION NO. 93 OF 2022

Dnyaneshwr Krushnaji Ingle, aged about
 65 years, Occ : Labourer, R/o Plot No.
 44, Santa Krupa Swami Nagar, Diwan
 Layout, Besa Nagpur, Tah. & Dist.
 Nagpur.

... PETITIONER

VERSUS

Secretary, Grampanchayat,
 Paunar, Tah. & dist. Wardha.

... RESPONDENT

Shri Amit M. Kukday, Advocate for the petitioner.
 Respondent is served.

CORAM : VINAY JOSHI, J.

JUDGMENT RESERVED ON : 23.08.2022.

JUDGMENT PRONOUNCED ON : 25.08.2022

JUDGMENT :

RULE. Rule is made returnable forthwith. Heard finally
 by consent of both the parties.

2. The petitioner has impugned herein an order dated 25.11.2021 in Criminal Misc. Application No. 257 of 2019 whereby the Magistrate has declined to issue directions for delayed registration of date of birth of the petitioner's father.

3. The petitioner has applied to the Magistrate in terms of Section 13(3) of the Registration of Births and Deaths Act, 1969 (for short 'the Act of 1969') seeking directions for registration of date of birth of his father namely Krushnaji Bisanji Ingle, who was born on 04.08.1930 at village Paunur, District Wardha. It is the petitioner's case that his father resided at village Paunur till the year 1935, and thereafter, shifted his family at village Natala, Taluka and District Wardha. At the time of birth of the petitioner's father, Gram Panchayat office at village Paunur was not in existence. The petitioners grandparents were illiterate and therefore, they had not recorded the birth entry of the petitioner's father at nearest government office. At relevant time, the Kotwal of village paunur used to maintain the record of births and deaths of villagers.

4. It is the petitioner's case, that after inquiry from village inhabitants, he came to know that his father Krushnaji born at village Paunur on 04.08.1930 at residential house. The Village Sarpanch has

issued a certificate stating that the petitioner's father was residing at village Paunur till the year 1935. The petitioner has applied to the Tahsil office for issuance of birth certificate on which it is informed that the old registers are in decayed conditions and therefore, requisite information cannot be supplied. Having no remedy left, the petitioner has applied to the Magistrate under Section 13(3) of the Act 1969, who is empowered to issue directions for delayed registration of birth date.

5. The petitioner has filed certain documents as well as led evidence however, the Magistrate was dissatisfied regarding alleged date of birth and accordingly, rejected the application. It is the petitioner's contention that he has led the best possible evidence before the Magistrate to vouch and verify the correctness of the birth information. However, the Magistrate has rejected the application by taking hyper technical view. The petitioner has led his evidence before the Magistrate stating the contents regarding date of birth of his father. He has produced a certificate issued by the Gram Panchayat Office regarding residence of petitioner's father at Paunur village till the year 1935. Likewise, the petitioner has produced a certificate issued by the Naib Tahsildar informing that the old record is decayed and therefore, the requisite certificate cannot be issued. The petitioner in his evidence has stated that he learnt from his relatives and villagers that his father

born on 04.08.1930 at village Paunur. The petitioner has led evidence of his relative namely Abhimanyu Bavne to support his contention. This witness is the petitioner's maternal uncle, who was 78 years of age at the time of giving the evidence. He has stated that he was personally known to the petitioner's father and had good acquaintance with him. He has stated that the petitioner's father Krushnaji was stating that he born 11 days prior to the Independence Day and thus, his date of birth was 04.08.1930. Precisely, this witness has stated about his personal knowledge regarding date of birth of Krushnaji. The learned Magistrate has observed that the petitioner has not led evidence of any person having knowledge or a person who was present at the time of birth of the petitioner's father. As a matter of fact, witness Abhimanyu Bavne has stated about his personal knowledge regarding date of birth of the petitioner's father. It is highly impossible to examine a person, who was present in the year 1930. The law expects to lead evidence, which is possible to be led.

6. The respondent resisted this application by stating that since the Act came into force in the year 1969, the Gram Panchayat has no authority to take entry of the births or deaths prior to the enactment. The learned Counsel for the petitioner has relied on the decision of the Full Bench of the Kerala High Court in case of **Abu vs.**

Sub Divisional Magistrate 1998 SCC OnLine Ker 248, wherein the Kerala High Court has considered the said difficulty and expressed that it is open to those who are born before the enactment to take advantage of the provisions of Section 13 of the Act 1969. Section 13(3) of the Act, 1969 empowers the Magistrate of First Class to pass an order for taking delayed entry of registration of births and deaths provided on verifying the correctness of the information.

7. There was paper publication of the proceedings, however, no one has objected to the contents of the application. There is no contrary material to discard the petitioner's statement. The Act of 1969 nowhere precludes the Magistrate to exercise the powers conferred under Section 13(3) of the Act 1969 to a person who born prior to the enactment. The very purpose of the Act would be defeated if such view is taken that the person who was born prior to the enactment, his entry cannot be taken. In that case, the person would remain without remedy of registration. The evidence is to be appreciated in the context that the petitioner was to establish the date of birth which took place prior to several decades i.e. in the year 1930. In that relation, the petitioner has led evidence of a person who had personal knowledge regarding date of birth of his father. The birth certificate may require for variety of reasons. There is no justification to deny the petitioner's right especially

when no counter material is available.

8. In that view of the matter, the petition is allowed. The impugned order dated 25.11.2021 passed by the Judicial Magistrate First Class, Wardha in Criminal Misc. Application No.257 of 2019 is hereby quashed and set aside. The concern authority is directed to record delayed birth entry of the petitioner's father namely Krushnaji Bisanji Ingle as he was born on 04.08.1930 on payment of prescribed fees and necessary compliance.

9. The petition stands disposed of in the afore-stated terms.

(VINAY JOSHI, J.)

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