

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

**CRIMINAL WRIT PETITION NO. 88 OF 2022**

Mangala Suresh Surkar @ Sau. Mangala  
 Gajanan Rohankar, aged about 48 years,  
 Occu – Service, r/o Police Colony  
 Complex, Gadchiroli, Tahsil and District  
 Gadchiroli.

... PETITIONER\_

**VERSUS**

Tukaram Soma Surkar, Aged 59  
 years, Occ. - Cultivation, r/o  
 Kawathi, Tahsil – Saoli, district –  
 Chandrapur.

... **RESPONDENT.**

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Shri Madhur Deo, Advocate for the petitioner.  
 Shri N.R. Bhishikar, Advocate for the respondent.

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**CORAM** : **VINAY JOSHI, J.**  
**DATED.** : **29.07.2022.**

**ORAL JUDGMENT :**

**RULE.** Rule is made returnable forthwith. Heard finally by

consent of learned Counsel appearing for the parties.

2. The petitioner has questioned the legality and tenability of the directions issued by the Magistrate in terms of Section 156(3) of the Code of Criminal Procedure (‘the Code’) and the consequential order of dismissal of revision application.

3. The facts leading to filing of present writ petition are that the respondent has filed an application to the Magistrate bearing Criminal Misc. Application No.135 of 2017 seeking directions for investigation in terms of Section 156(3) of the Code. The original applicant - Tukaram Surkar alleged that the petitioner Mangala got married with his brother namely Suresh, who was in police service. In the year 1992, Suresh died in naxal movement and thus, the petitioner – Mangala become widow. It is alleged that the petitioner though remarried she had made a false statement and affidavit in the Court of law while obtaining heirship certificate of Suresh Surkar and that is the principal grievance. In that regard it is stated that the petitioner made several false statements in heirship proceeding stating that she was the only legal heir of Suresh Surkar and had used forged documents for obtaining heirship certificate. It is alleged that though she was in service, she has suppressed the said fact in the proceedings. It is also

contended that there was no proper publication of the notice of the heirship application. The learned Magistrate has issued directions to the Police in terms of Section 156(3) of the Code to carry investigation and the said order was confirmed in the revision application.

4. Learned Counsel appearing for the petitioner-lady would submit that the principal allegations are about making false statement and filing false affidavit in the Court and thus, it being an offence against administration of justice, the bar created under Section 195(1) (b)(i) of the Code, would apply. To substantiate said contention he relied on the decision of this Court in case of *Lan Eseda Industries Ltd. Mumbai vs. Shree Hari Rise and Agro Ltd. Gondia 2019(1) Mh.L.J. (Cri.)393*.

5. On facts it is submitted that the Government has floated a Scheme in the year 2016 for paying compensation to the widow of deceased Police personnel who died in Naxal movements. The petitioner has filed a communication dated 02.12.2016 on the basis of which it is claimed that though the petitioner is remarried she is entitled for compensation. It is also submitted that the original applicant Tukaram is not the legal heir and thus, the applicants grievance is not tenable.

6. The entire tenor of the complaint is of making false statement and filing false supporting affidavit in the Civil Court while obtaining the heirship certificate. Having regard to these specific allegations, it clearly fall under the bar of Section 195(1)(b)(i) of the Code. Moreover, the original applicant - Tukaram has not approached to the Court for recall of the order of heirship certificate. So far as the allegations of non publication of the notice of heirship application is concerned, it is the domain of concerned Court in which the applying party has no role. Thus, due to statutory bar, the complaint is not maintainable, and therefore, both orders below would not sustain.

7. In view of that, writ petition is allowed. The impugned order passed by the learned Magistrate dated 20.09.2017, directing the Police to carry investigation is hereby quashed and set aside along with the consequential order passed in the revision application.

8. The original applicant - Tukaram is at liberty to resort appropriate legal remedy as permissible under the law.

**(VINAY JOSHI, J.)**