

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

CRIMINAL WRIT PETITION NO.73 OF 2023

NANDA GULAB PAWAR
VERSUS
BALASAHEB YESHWANT KEDAR AND OTHERS

...

Advocate for Petitioners : Mrs. R. S. Kulkarni h/f Mr.
D. B. Rode

Advocate for Respondent No.2 : Mr. S. V. Suryawanshi

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CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 13, 2023

PER COURT :

1. This Petition takes exception to order dated 04.01.2023 passed in R.C.C. No. 88/2005 below Exh. 255, an application filed by the complainant with seeking permission to examine Sub-Registrar, Shrigonda for exhibiting correction deed bearing no. 1570/2004.

2. Petitioner is original complainant who had made grievance against the accused of executing bogus document i.e. correction deed whereby her right created by virtue of document dated 12.06.1998 was sought to be taken away. Accused are being tried on basis of this complaint. Petitioner examined herself and led other evidence and thereafter matter is closed for arguments.

An application came to be filed vide Exh. 255 when the complainant realised that the correction deed in question has not been exhibited. With these averments the prayer was made for examining the Sub-Registrar, Shrigonda to prove the said document.

3. This application was opposed by all accused persons with the contention that it was possible for the complainant to examine the witness but complainant herself has closed the evidence and since now arguments of complainant is over so also the argument for accused no. 1 is over, it is not appropriate to grant such permission. One more reason given for rejection of application is that the proceeding is pending since year 2005 and that the complainant commenced her recording of her evidence in the year 2015 which continued till 06.03.2019. On these amongst other contentions, rejection of application was sought.

4. Learned Counsel for Petitioner submits that there is no dispute about the fact that the document i.e., correction deed is relevant for the purpose of decision of the case. It is her contention that since the Court had permitted the complainant to lead

secondary evidence to prove the said document, this indicates relevancy thereof. It is submitted that for the reasons mentioned in the application the relevant witness could not be examined to prove the said document and that non exhibition of the said document was revealed to the Counsel for the Applicant appearing before the trial Court only during the course of argument when the Counsel for the accused has objected for referring to the said document. Thus, it is her contention that learned trial Court ought not to have rejected the application on technicalities rather would have considered the inadvertence.

5. Learned Counsel for Accused No. 2 opposed the said contentions by submitting that the accused are subjected to criminal trial since 2005 and this is not the case wherein the complainant is prevented at any time from recording evidence. It is his submission that there is delay caused by the complainant in recording the evidence and also that application in question is filed to fill up the lacunas.

6. Other accused, who are served with the notice of this Petition, failed to appear before this Court.

This shows that they are not inclined to oppose the Petition.

7. *Prima facie* perusal of the record indicates that it is the case of the complainant that the right created in her favour by document dated 12.06.1998 has been denied by executing bogus correction deed bearing no. 1570/2004. The impugned order indicates that when it was made known to the trial Court that the original correction deed is not available, secondary evidence was allowed to be led. This fact confirms the relevancy of said document for the decision of the case. Section 311 of the Code of Criminal Procedure provides for discretionary power to the Court to permit the party to lead evidence if such evidence is just and necessary for the proper decision of the case. From the impugned order itself it has to be held that the document concerned is absolutely essential for the decision of the case.

8. Perusal of this order shows that learned trial Court has misdirected itself when observations are made on the merit of the proof of the document. It is pertinent to note that the application in question has

been filed only for the reason that document is certified copy and is not exhibited by the Court and for the purpose of same, examination of Sub-Registrar is sought. Learned trial Court has not recorded any reason to indicate as to how the examination of this witness would amount to covering up or fill up of lacunas by the complainant. Admittedly, the document was filed before the trial Court on 15.11.2016. Thus, it cannot be said that any new document is sought to be introduced in the proceeding to call it as covering up of the lacunas or loopholes. Thus, it is not the case the application could be rejected on that count.

9. Learned Counsel for Accused No. 2 has led stress on the point that complainant has delayed the proceeding and which could be a ground for rejection of application. The impugned order does not state so. Thus, this Court has no reason to accept this contention raised on behalf of Accused No. 2. The apprehension of the accused can be taken care by directing the complainant and trial Court to examine said witness in time bound manner.

10. Learned Counsel for the Petitioner, on

instructions, makes statement that the examination of said witness shall be done as expeditiously as possible, she however, claims that since the issuance of summons is required, sufficient time may be given for completion of evidence.

11. This Court is of the view that the entire procedure can be completed from issuance of summons till examination of witness, in any case, within a period of one months. Parties are directed to appear before learned trial Court on 25.09.2023. The evidence of proposed witness shall be concluded on or before 20.10.2023. Trial Court to decide proceedings finally on merit before 31st December, 2023.

12. Petition stands disposed of in above terms.

(R.M. JOSHI, J.)

Malani