

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

**CRIMINAL APPLICATION NO.1527 OF 2022 IN
CRIMINAL APPLICATION NO. 236 OF 2022**

Qamar Begum Abdul Rauf

Applicant

Versus

**The State of Maharashtra
and another**

Respondents

Mr. M. R. Sonawane, advocate for the Applicant
Mr. A. M. Phule, AGP for Respondent No.1.
Mr. M. P. Tripathi, advocate for Respondent No.2.

**CORAM : SMT. VIBHA KANKANWADI AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 13th February, 2023.

ORDER (Per Smt. Vibha Kankanwadi, J.):

Today, in pursuance to the notice, learned Counsel for Respondent No.2 has tendered affidavit-in-reply of Respondent No.2, which is taken on record.

2 The present application has been filed by original Respondent No.2 in Criminal Application No. 236 of 2022 for the following prayer:

“B The F.I.R. bearing Crime No. 145/2021, registered at Parli City Police Station, District Beed, for the offence punishable U/sec. 420, 504, 506 of I.P.C. in pursuance of the complaint lodged by respondent no.2 may kindly be quashed and set aside.”

3 Heard Mr. M. R. Sonawane, learned advocate for the applicant and Mr. M. P. Tripathi, learned Counsel for Respondent No.2.

4 It has been vehemently submitted on behalf of the applicant that present Respondent No.2 had filed Criminal Application No. 236 of 2022 for quashment of the F.I.R. vide Cr. No. 145/2021, registered against present Respondent No.2 at the behest of the applicant with City Police Station, Parali, District Beed, for the offences punishable under Sections 420, 504, 506 of the Indian Penal Code.

5 After hearing all the parties concerned, this Court, by an order dated 17th March, 2022, has quashed the

proceedings especially in terms of prayer clause “B” which was, in fact, on the basis of consent affidavit filed by the present applicant.

6 The learned advocate appearing for the applicant has raised an objection that there are observations in respect of the Will that, it was left by the husband of the applicant in favour of Respondent No.2, in the order passed by this Court on 17th March, 2022. However, in respect of the said Will, prior to the institution of the FIR, there were two suits pending in which the objections have been raised i.e. the alleged Will was not acceptable to the present applicant. Further, the said Will came to be registered after the date of death of the executant, which is a glaring doubtful circumstance. Now, the Respondent No.2 is taking disadvantage of the observations of this Court in para 4 of the said order in respect of the Will and, therefore, it is necessary to delete those observations.

7 The learned advocate for Respondent No.2 has

raised strong objection. It is stated that the said observations in para 4 of the order of this Court are, in fact, an outcome of the consent affidavit in para 4 filed by the applicant herself. This Court, while taking note of the said consent or statement in the consent affidavit, has only considered it and stated so and it does not amount to any further observation in favour of anybody. In other words, it is only taking note of the statement made by the applicant herself. Therefore, there is no necessity to delete the same. He further submits that there is no provision in the Code of Criminal Procedure to recall or modify the observations made in the order by any Criminal Court. He quotes Section 362 of the Code of Criminal Procedure and submits that it specifically bars alteration of the judgment except a clerical or arithmetical error and, therefore, the present application is not maintainable.

8 At the outset, it is to be noted that the F.I.R., which was filed by the present applicant, related to cheating in respect of the cheque and thereafter misusing the same,

withdrawal of amount of Rs.65,92,000/- from the account of husband of the applicant. In the F.I.R., there was no mention about the Will. However, when the notice was issued to Respondent No.2 therein i.e. present applicant, she had filed the consent affidavit and it had been then stated that the issue is satisfied outside the Court due to intervention by the village elders and she has no objection for quashing of the F.I.R. Then it is specifically stated in para 4 of the consent affidavit about the Will. We do not want to repeat the same, but said paragraph no.4 was considered by this Court while passing the order on 17th March, 2022. The observation, which the applicant wants to get deleted, starts with the words, "It further appears.....", which depicts that whatever was there in the consent affidavit, had been reproduced. That does not amount to observation. In fact, there was no hurdle for the applicant to make a mention about pendency of two suits and still she has given consent for quashing of the F.I.R. The quashing of the FIR was on a different footing and challenge to the Will appears to be on a different footing. 9

Another fact, that has been brought on record now by

the present Respondent No.2, is that he has deposited an amount of Rs.65,92,000/- and then it has been withdrawn by the applicant from this Court. We would like to say that if at all a remedy is there to the applicant to challenge the said Will (which, as per her contention, is already under challenge), those proceedings would take care of the challenge and the legal point is still open as regards how the consent affidavit can be received in evidence. Therefore, those statements in the order dated 17th March, 2022, which reiterate the contents of the consent affidavit, can not be deleted. There is no merit in the application and it deserves to be rejected.

9 Criminal application is accordingly rejected.

[SANDIPKUMAR C. MORE]	[SMT. VIBHA KANKANWADI]
JUDGE	JUDGE

adb