

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

47 CRIMINAL WRIT PETITION NO. 1528 OF 2022

SAYYED RAFIQ S/O SAYYED LAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Pathan Hasrat Khan Z. K.
APP for Respondent No.1-State : Mr. Y. G. Gujarati
Advocate for Respondent Nos. 2 and 3 : Mr. S. N. Lale Yelwatkar h/f
Mr. R. G. Joshi

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CORAM : KISHORE C. SANT, J.
DATED : 02.03.2023

PER COURT :-

1. Heard.
2. Taken up for final disposal by consent of the parties.
3. The petitioner claims to be a public spirited person and R.T.I. activist. He had approached the City Chowk Police Station, Aurangabad by filing a complaint dated 03.08.2016 informing that one Fakruddin, who died issue-less, had a property in his name. That he had not executed any will deed. Some of the accused persons named in the complaint, posing themselves as legal heirs, had transferred the lands belonging to the deceased even before the heirship certificate was obtained. It is alleged in the said complaint

that present respondent nos. 2 and 3 were working as servants in the shop of the deceased. It is alleged that they also are involved in getting the fabricated documents prepared. With these allegations, the complaint was lodged. The police did not take any cognizance and therefore, the petitioner filed a complaint in the court of learned J.M.F.C., Aurangabad being R.C.C. No. 3052/2016. The allegations against the present respondents are as stated above. Learned J.M.F.C., Aurangabad, by order dated 21.11.2018 was pleased to issue process against all the accused persons total 11 in number. Accused Nos. 1 and 5 to 9 filed Criminal Revision Application No. 351/2018 in the court of learned Sessions Judge, Aurangabad. The same came to be rejected, against which Criminal Writ Petition No. 459 of 2019 was filed wherein this Court by order dated 03.01.2020 partly allowed the petition and the order of J.M.F.C., Aurangabad was confirmed to the extent of issuance of process under Section 468 r/w 34 of IPC.

4. The present respondents filed Criminal Revision Application No. 343 of 2018. The same came to be allowed by learned revisional court. The order of issuance of process as regards present respondent nos. 2 and 3 i.e. original accused nos. 2 and 3 came to be set aside. It appears that the order passed by this Court in Criminal Writ Petition No. 459 of 2019 was not pointed out to the learned Additional

Sessions Judge in Criminal Revision Application No. 343 of 2018. On perusal of both the orders i.e. the order passed by this Court in Criminal Writ Petition No. 459 of 2019 and the order passed by the revisional court in Criminal Revision Application No. 343 of 2018, it appears that the observations made by the Additional Sessions Judge are not in consonance with the order passed by this Court. The propriety requires that the Sessions Court to pass a fresh order in view of the order passed by this Court in Criminal Writ Petition No. 459 of 2019. Hence, the following order:

ORDER

- I. The petition is partly allowed.
- II. The impugned order dated 18.08.2022 passed in Criminal Revision Application No. 343 of 2018 is quashed and set aside.
- III. The learned Sessions Judge, Aurangabad to consider Criminal Revision Application No. 343 of 2018 in view of the order passed by this Court dated 03.01.2020 in Criminal Writ Petition No. 459 of 2019.
- IV. The criminal writ petition is accordingly disposed off.

[KISHORE C. SANT, J.]