

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3469 OF 2014

Shri. Ramesh Tirkappa Gaikwad & Ors

..Petitioners

Versus

The State of Maharashtra & Ors

..Respondents

Mr. Shrishail Sakhare, for the Petitioners.

Mr. Arfan Sait, APP for State/Respondent No.1.

Mr. Milind R. Deshpande, for Respondent Nos.2 to 4.

CORAM : SARANG V. KOTWAL, J.

DATE : 8 AUGUST 2023

PC :

1. In this writ petition, the Petitioners have challenged the order dated 13.05.2014 passed in the Criminal Enquiry proceeding No.446 of 2013, passed by the Sub Divisional Magistrate, Solapur-1. The proceedings were U/s.145 of the Cr.p.c. By the impugned order, the Sub Divisional Magistrate held that, when the police had sealed the premises, the possession of the premises was with the Respondent Nos.2 and 3's family and the police officers were directed to handover the possession to the Respondent Nos.2 and 3's family.

2. Learned counsel for the petitioners submitted that the Sub Divisional Magistrate had recorded in the *roznama* dated 06/03/2014 that the matter was kept for passing the order. After 06/03/2014, surprisingly, the Sub Divisional Magistrate recorded the statements of Bhikaji Gajare and Anita Kadam on 08/05/2014 and passed the order on 13/05/2014. Shri. Sakhare, therefore, submitted that, this was in violation of principles of natural justice because the petitioners were not given an opportunity to make their submissions in respect of these two statements.

3. Learned APP filed an affidavit of the Sub Divisional Magistrate, in which, he tried to take recourse to Sub Section 4 of Section 145 of the Cr.p.c. to contend that, it was not necessary to give an opportunity to the petitioners.

4. This, in my opinion, would be in violation of principles of natural justice. However, the order was passed on 13/05/2014. More than nine years have passed and at this stage, I do not see any propriety to remand the matter back before the Sub Divisional Magistrate; particularly in view of the fact that both the contesting

parties have filed their respective Civil Suits which are still pending.

5. When I expressed my opinion, learned counsel for the petitioners did not press this petition. His only contention is that, it may be clarified that the impugned order shall not come in his way when the civil suits are decided by the competent civil Court. The request is reasonable.

6. Hence, the following order:

O R D E R

- i) The petition is disposed of as not pressed.
- ii) It is clarified that the order dated 13/05/2014 passed by the Sub Divisional Magistrate, Solapur-1 in Criminal Inquiry proceeding No.446 of 2013 shall not come in the way of the petitioners in either of the civil suits.
- iii) The rights and contentions of both the contesting parties are specifically left open. They can be

decided by the competent Civil Court in
accordance with law.

(SARANG V. KOTWAL, J.)