

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 17 OF 2023

PETITIONERS : 1. Zhanaklal S/o. Asaram Rahangadale,
Aged about 48 years, Occupation :
Service, Resident of Ghattemni, Tahsil
– Amgaon, District : Gondia (M.S.).

2. Mahendra S/o. Sakharam Deshmukh,
Aged about 38 years, Occupation :
Service – Junior Clerk at Shri Gajanan
Maharaj High School, Ghattemni,
Tahsil Amgaon, District – Gondia
(M.S.).

//VERSUS//

RESPONDENTS : 1. Dhaniram S/o. Kisan Doye, Aged
about 63 years, Occupation : Private
Work, Secretary of Shri Gajanan
Maharaj Shikshan Va Kala Sanstha,
Ghattemni, Tahsil Amgaon, District :
Gondia (M.S.).

2. The State of Maharashtra, through its
P.S.O. Gondia.

Mr. B.M. Kharkate, Advocate for the Petitioners.
Ms. Deepa I. Charlewar, Advocate for Respondent No.1.
Ms. Mayuri Deshmukh, APP for Respondent No.2/State.

CORAM : G. A. SANAP, J.
DATED : 5th JULY, 2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The petition is heard finally by consent of learned advocates for the parties at the admission stage. Perused the record and proceedings.

02] In this writ petition, challenge is to the order dated 9th August, 2021, passed by learned Sessions Judge, Gondia, whereby learned Sessions Judge was pleased to allow the revision application filed by respondent No.1 against the order dated 13th August, 2019, passed by learned Judicial Magistrate First Class, Aamgaon, thereby rejecting the complaint filed by respondent No.1.

03] Considering the nature of the order challenged in this proceeding, it may not be necessary to narrate the facts in detail. It is the case of respondent No.1 that accused Nos.1 and 2 in furtherance of their common intention, fabricated a stamp in the name of President and Secretary of the Society. After fabricating the documents and stamp, accused No.2 withdrew Rs.60,000/- (rupees sixty thousand only) from the State Bank of India, Branch Aamgaon.

04] Respondent No.1 filed a complaint in the Court of learned Judicial Magistrate First Class, Aamgaon. Learned Magistrate, on receipt of the report of the enquiry by the police under Section 202 of the Code of Criminal Procedure, 1973, passed detailed order and dismissed the complaint.

05] Respondent No.1 (original complainant), being aggrieved by this order, filed a revision application in the Sessions Court, Gondia. Learned Sessions Judge, Gondia found that opportunity was not granted to the complainant by Magistrate to lead further evidence, after receipt of report under Section 202 of the Cr.PC from the police. Learned Sessions Judge, therefore, allowed the revision application filed by the complainant and set aside the order passed by learned Judicial Magistrate First Class, Aamgaon. The petitioners/accused, being aggrieved by this order, are before this Court.

06] I have heard Mr. B.M. Kharkate, learned advocate for the petitioners, Ms. Deepa I. Charlewar, learned advocate for respondent No.1 and Ms. Mayuri Deshmukh, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

07] Learned advocate for the petitioners submitted that though the petitioners were served in the revision application, due to Covid-19 pandemic, they could not attend the Court. It is submitted that, therefore, the revision was decided in their absence. It is submitted that the order passed by learned Sessions Judge, Gondia, is not in accordance with law.

08] It is to be noted that learned Sessions Judge set aside the order of dismissal of complaint and restored the complaint to the file of learned Magistrate for further enquiry, before passing the order of taking cognizance of the offences alleged to have been committed by the accused. Learned Sessions Judge found that on receipt of report from the police, learned Magistrate did not grant an opportunity to the complainant to adduce his further evidence. Learned Sessions Judge has observed that learned Magistrate was under obligation to grant an opportunity to the complainant to tender his evidence, before disposing of the complaint finally, one way or the other.

09] On going through the record and particularly the orders passed by learned Magistrate and learned Sessions Judge, I am of the view that learned Sessions Judge has not committed any

illegality. Learned Sessions Judge has not granted any substantial relief to the complainant. The complaint has only been restored. The complainant would be required to lead his evidence in the said complaint and satisfy learned Magistrate about the alleged offences committed by the accused for the purpose of taking cognizance and issuance of process.

10] In the facts and circumstances, I do not see any substance in this petition. It is, accordingly, **dismissed**. Rule stands discharged.

(G. A. SANAP, J.)

Vijay