



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

...

CRIMINAL REVISION NO. 178/2019

Sudam Ghanshyam Amrute

.. Applicant/ s

versus

State of Maharashtra & others

.. Respondent/s

.....
Mr. S.B.Gandhe, Advocate for the applicant/s

Mr. Amit Chutke, APP for Respondent No.1-State

Mr.Bhushan Bhendarkar, Adv(appointed) for Respondent No.2
.....

CORAM: ANIL L. PANSARE, J.

DATED : 24th August, 2023.

PC:

Heard.

2. The applicant/original complainant is aggrieved by the judgment and order dated 2nd May 2019 passed by the learned Sessions Judge, Amravati in Criminal Appeal No.23/2016 thereby dismissing the appeal, filed under section 372 of the Code of Criminal Procedure (in short (in short 'the Code') arising out of judgment and order dated 31.12.2015 passed by the learned Judicial Magistrate, First Class Morshi in RCC No.207/2009.

3. The applicant/complainant filed complaint under section 200 of the Code against the respondent no.2-brother, respondent no.3-Talathi and the mother-Kalawatibai (since deceased), for the offence punishable under Section 465 of the IPC.

4. The case of the applicant/complainant is that his father has executed a will in the year 1999. The property belonging to his father was later on i.e.07.01.2003 partitioned amongst the applicant/

complainant, respondent no.2-brother, another brother Vinod and father Ghanshyam. The father expired in the year 2004.

5. It is the case of the applicant/complainant that the respondent no.2 has prepared a false will of his father bequeathing his property in the name of the mother. It is further the case of the applicant that the respondent no.2, in connivance with the respondent no.3-Talathi, mutated the name of the mother in the revenue record and made an attempt to grab the property.

6. Thus, the basic allegation is that the respondent no.2 has forged the will. Both the Courts below have disbelieved this theory for the reason that the will which is said to have been forged, has not been placed on record.

7. Having heard both the sides and considering the definition of 'forgery' as defined u/s 463 of the Code, the absence of will is definitely something that goes to the root of the matter. The applicant/complainant claims that will has been forged. In absence of will, it will be difficult to prove the forgery and, therefore, both the Courts below have rightly held that forgery of document cannot be proved in the given facts and circumstances of the case, without the will having been placed on record.

8. The learned counsel for the applicant has argued that the evidence of Talathi was indicative of the fact that the will was placed before him. That by itself will not override the necessity of proof of forgery and, therefore, there is no substance in such an argument. The

concurrent finding rendered by the Courts below, with the limited scope available to this Court under its revisional jurisdiction, cannot be entertained on such a flimsy ground.

9. There is no substance in the Revision. The same is rejected.

10. Professional fees of Adv.B.Bhendrakar (appointed) on behalf of respondent no.2, be quantified and paid as per the Rules.

[ANIL L. PANSARE, J.]