



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1110 OF 2024

Laxman Nivritti Khating
Age: 55 Years, Occ: Labour,
R/o: Pimpri (Zhola),
Tal. Gangakhed, Dist. Parbhani

... PETITIONER

VERSUS

- 1] The State of Maharashtra
Through Investigation Officer,
Gangakhed Police Station,
Tq. Gangakhed, Dist. Parbhani
- 2] Baburao Dnyandeo Bhise
Age: 75 years, Occu: Agri
- 3] Bhagwan Dnyandeo Bhise
Age: 60 years, Occu: Agri
- 4] Sunil Baburao Bhise
Age: 23 years, Occu: Agri
- 5] Sanjay Baburao Bhise
Age: 35 years, Occu: Agri
- 6] Anil Baburao Bhise
Age: 20 years Occu: Agri
- 7] Bandu @ Suryakant Baburao Bhise
Age: 42 years, Occu: Agri
- 8] Maroti Dnyandeo Bhise
Age: 65 years, Occu: Agri
- 9] Ganpu Baburao Bhise
Age: 35 years Occu: Agri

10] Dhanji @ Dhanraj Baburao Bhise

Age: 24 years Occu: Agri.,

All R/o: Mauje Pimpri Zhola,

Tq. Gangakhed, Dist. Parbhani

... **RESPONDENTS**

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Mr. Syed Azizoddin R., Advocate for the Petitioner

Mr. V. M. Jaware, APP for Respondent No.1 – State

Mr. Sachin B. Munde, Advocate for Respondent Nos. 2 to 10

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 14.12.2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. With consent of the parties, the matter is heard finally at the stage of admission.

2. By the present Petition, the Petitioner has challenged the order dated 27.03.2024 passed below Exh. 1 in R.C.C. No. 57 of 2014, by the learned Additional Chief Judicial Magistrate, Gangakhed, whereby the evidence of the prosecution was closed only on the ground that the matter is pending since last 10 years and the prosecution examined in all eight witnesses. However, the prosecution failed to secure the presence of the Investigating Officer.

3. According to the learned Counsel for the Petitioner, the Petitioner has lodged a FIR bearing Crime No. 252 of 2013 on 24.09.2013 alleging that on the day of incident, the accused persons

assaulted him, due to which he sustained grievous injuries. After completion of investigation, the charge-sheet came to be filed against the accused persons. The prosecution examined in all eight witnesses, however, failed to secure the presence of the Investigating Officer. Ultimately, on 27.03.2024, the learned trial Court closed the evidence of prosecution witness and decided the matter by recording the statement under Section 313 of Cr.P.C. Therefore, the omissions and contradictions cannot be proved if the prosecution fails to examine the Investigating Officer, hence prayed for quashing and setting aside the impugned order.

4. The learned Counsel for Respondent Nos. 2 to 10 strongly opposed the Petition on the ground that though several opportunities were granted to the prosecution to examine the Investigating Officer, despite of same the prosecution failed to examine the Investigating Officer without any reason. Not only that but the trial Court had also issued a bailable warrant, still the Investigating Officer did not appear in the matter. Therefore, the learned trial Court passed the impugned order and closed the evidence of prosecution witness, which does not appear to be illegal and bad in law, hence prayed for dismissal of the Petition.

5. Needless to say that the informant was having no control over the trial of any offence. In the case in hand, Respondent Nos. 2 to 10 are facing trial for the offence punishable under Section 143, 147, 148, 149, 326, 323, 504 of Indian Penal Code, 1860. The Investigating Officer Mr. P. B. Gitte, filed the charge-sheet after conducting the investigation. The prosecution examined in all eight witnesses. However, the prosecution could not secure the presence of the Investigating Officer for a considerable period. Therefore, the Petitioner / informant apprehended that he will not get substantial justice, because of non examination of the Investigating Officer, the omissions and contradictions are not brought on record and remained unproved.

6. On face of record, it appears that the Petitioner participated in the trial after obtaining the permission to assist the prosecution. Therefore, considering the nature of offence, it would be just and proper to quash and set aside the impugned order with a view to give sufficient opportunity to the Petitioner to examine the prosecution witness.

7. During the course of argument, the learned APP made a statement that Investigating Officer Mr. P. B. Gitte, P.S.I., is presently

attached with Nagar Taluka Police Station, Ahilyanagar and he would *suo motu* appear on 03.01.2025 before the learned Additional Chief Judicial Magistrate, Gangakhed at 11.00 a.m.

8. Therefore, the impugned order dated 27.03.2024 is hereby quashed and set aside. The learned Chief Judicial Magistrate, Gangakhed, is hereby directed to record evidence of the Investigating Officer Mr. P. B. Gitte, P.S.I., attached with Nagar Taluka Police Station, Ahilyanagar, on 03.01.2025. It is made clear that if the Investigating Officer Mr. P. B. Gitte fails to appear on 03.01.2025 before the concerned Magistrate, in that event, the Superintendent of Police, Ahilyanagar, is hereby directed that he shall not release the salary of the Investigating Officer Mr. P. B. Gitte, for a period of six months.

9. In view of the above, the Writ Petition is allowed. Rule is made absolute in terms of prayer clause (C).

[Y. G. KHOBRAGADE, J.]

SMS