



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

909 CRIMINAL WRIT PETITION NO. 1545 OF 2023

SHANKAR GANGARAM CHAKURKAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for the Petitioner : Mr. Gangakhedkar Shailendra S.
APP for Respondent/State : Mr. S.P. Sonpawale
Advocate for Respondent no.2 : Mr. Deshmukh Umakant B.
...

CORAM : **SHIVKUMAR DIGE, J.**

DATE : 11th July, 2024.

P.C.:

1. By this writ petition, the petitioner is challenging the order dated 21st September, 2023 passed by the Additional Sessions Judge, Biloli on application below Exhibit-34 in Sessions Case No.13 of 2023, whereby request under section 451 of the Criminal Procedure Code (for short, "Cr.P.C.") for release/custody of 12 receipts of food grains seized by Respondent No.1 in Crime No.101/2022 (Sessions Case 13 of 2023), came to be rejected and application below Exhibit-3 filed by respondent no.2 is allowed, for giving custody of these 12 receipts.
2. It is contention of the learned counsel for the petitioner that Mr.Mangesh Tadkhele was Proprietor of Shri Pandurang Trading Company and was doing business of commission agent at Mondha,

Degloor, Dist. Nanded. Mr. Mangesh had purchased certain agricultural produce and kept it in Buldhana Urban Cooperative Society Warehouse at Khanapur. The learned counsel further submitted that since Mr.Mangesh was in dire need of money, required to be paid to the agriculturists from whom he had purchased the agricultural produce, Mr.Mangesh approached the petitioner and requested for purchase of agricultural produce. Accordingly, he issued purchase receipt and handed over 12 receipts about deposit of the agricultural produce kept in Buldhana Urban Warehouse. In lieu of handing over the 12 receipts, the petitioner had paid him the consideration amount. The learned counsel further submitted that at the relevant time, Mr.Mangesh had executed the written receipt to be submitted to the credit society with whom the goods were kept. The learned counsel further submitted that Mr.Mangesh has committed suicide and his dead body was found on 24th February, 2022. The police registered the offence under section 306 read with 34 of the Indian Penal Code (for short, "I.P.C.") against four persons, who are relatives and close acquaintance of Mr.Mangesh. The learned counsel further submitted that three suicide notes were recovered during the course of panchanama. In these suicide notes the name of the petitioner was referred to about holding possession of 12 receipts. The petitioner was called by the police authority and asked him to produce 12 receipts. Accordingly, the police has seized 12 receipts from the

possession of the petitioner. The counsel further submitted that the petitioner sought anticipatory bail in respect of the crime of suicide of Mr.Mangesh. The learned counsel further submitted that after completion of the investigation in respect of the crime registered for suicide of Mr. Mangesh, charge-sheet has been filed by the police. In the said charge-sheet no name of the petitioner is mentioned as accused. The recovery of the 12 receipts from the possession of the petitioner by the Investigating Officer was without any foundation. The possession of the petitioner over the 12 receipts is required to be considered as a lawful and as such the provisions of Section 102 of Cr.P.C. has no application in the present factual scenario. The learned counsel further submitted that initially before filing charge-sheet, the petitioner had filed an application seeking release of the 12 receipts before the learned Judicial Magistrate, First Class. The said application was rejected. The petitioner questioned the said impugned order before the Sessions Court by filing criminal revision. The Criminal Revision Application No.19 of 2022 is also rejected. The learned counsel further submitted that thereafter, after filing of the charge-sheet, the respondent no.2 filed an application for release of the 12 receipts and the petitioner also filed application for release of the 12 receipts. The Sessions Court has allowed the application filed by the respondent no.2 whereas the application of the petitioner has been rejected. The learned counsel further submitted that the trial Court has

not considered the fact that 12 receipts were in possession of the petitioner. The petitioner has paid the amount to deceased Mangesh. Mangesh has issued 12 receipts in respect of agricultural produce kept in warehouse to the petitioner. The petitioner is entitled to take custody of said agricultural produce, hence requested to allow the petition. The learned counsel is relying on ***M.T. Enrica Lexie and another Vs. Doramma and others*** reported in ***(2012) 6 SCC 760***.

3. It is contention of the learned counsel for respondent no.2 that the deceased was husband of the respondent no.2. Deceased was commission agent. He was doing business of agriculture produce. He had purchased the agricultural produce from the farmers and kept in the warehouse. The learned counsel further submitted that the house of respondent no.2 is situated in a village at 10 Kms away. From Degloor city, the deceased was collecting the grains from the farmers from various villages and the petitioner was staying at Degloor, hence for safety purpose, the deceased had kept 12 receipts with the petitioner. The learned counsel further submitted that the petitioner is not authorized agent. He is farmer and he has no authority for doing the business of grains. The learned counsel further submitted that the petitioner has alleged that he had paid Rs.44,00,000/- cash to the deceased husband of respondent no.2 but no documentary proof is produced in that regard. The learned counsel further submitted that the person who is doing the business of farming and having no other

source of income paying Rs.44,00,000/- in cash is hard to believe. The petitioner is taking disadvantage of 12 receipts kept with him. The learned counsel further submitted that though the petitioner is saying that the deceased had issued letter to the petitioner in respect of giving 12 receipts in his possession, but the said letter shows there is alteration of date on the said letter. The learned counsel further submitted that handwriting in the said letter and handwriting in suicide notes is different. It shows that after death of the deceased, the said letter is fabricated. The learned counsel further submitted that in initial application filed by the petitioner before the trial Court for release of the property there is no mention of the alleged letter issued by the deceased. The earlier application of the petitioner is rejected by the trial Court. The said order is confirmed by the Sessions Court, but thereafter the said order was not challenged by the petitioner. So the petitioner has no right to file further application for release of the property as earlier claim of the petitioner over the 12 receipts has been rejected by the trial Court. The learned counsel further submitted that in the nomination column of 12 receipts the name of respondent no.2 is mentioned. Moreover, the Sessions Court has directed respondent no.2 to give indemnity bond along with surety bond of Rs.50,00,000/-. The order passed by the trial Court is legal and valid. No interference is called in it. The learned counsel further submitted that the food grains kept in warehouse are perishable goods. Bank is issuing notices

for removing grains from the godown, hence requested to dismiss the petition.

4. I have heard both the learned counsel. Perused the impugned order passed by the Sessions Court.

5. Admittedly respondent no.2 is wife of the deceased. It is contention of the learned counsel for the petitioner that the petitioner had given amount of Rs. 44,00,000/- to the deceased, and he has purchased agricultural produce kept in warehouse and in return the deceased had given him 12 receipts about grains kept in warehouse. The petitioner is heavily relying on the letter dated 14th January, 2022. In this letter, it is mentioned that in lieu of agricultural produce kept in warehouse, the deceased had received Rs.44,87,500/- from the petitioner and the deceased had handed over 12 receipts to him. It is significant to note that though this letter was in possession of the petitioner, he has not referred this letter in the earlier application filed for release of the property before the trial Court. Earlier application of the petitioner to release of 12 receipts is rejected by the trial Court and thereafter the order of the trial Court was challenged before the Sessions Court by the petitioner and the said order is confirmed by the Sessions Court. When the petitioner was aware that he had paid the amount of Rs.44,87,500/- but no documents in that regard are produced on record. As observed above, no reference was given in initial application by the petitioner. Moreover, it appears that

handwriting of the letter dated 14th January, 2022 and the suicide notes of the deceased produced on record is different. It appears that date 14.01.2022 mentioned in letter is altered. It shows that after filing charge-sheet this letter has been prepared, because in suicide notes the deceased has mentioned that he had kept 12 receipts in respect of grains kept in warehouse with the petitioner and if the petitioner returns the 12 receipts, no action should be taken against him. As there was reference about the 12 receipts in suicide note when the police inquired with the petitioner about the 12 receipts, he handed over the 12 receipts to the police. The issue of section 102 of Cr.P.C. raised by the learned counsel for the petitioner is already dealt by the trial Court in initial application filed by the petitioner. In 12 receipts, in nomination column the name of respondent no.2 is mentioned as nominee. The food grains kept in warehouse are perishable. Moreover, the trial Court has allowed respondent no.2 to take the said grains by furnishing indemnity bond and surety bond of Rs.50,00,000/-. If the petitioner files any proceedings for claiming his amount, surety bond is there. The Sessions Court has passed well reasoned order. No interference is called in it and I pass the following order :-

ORDER

- (i) The writ petition is dismissed.

(ii) The learned counsel for the petitioner requests to stay this order. As food grains are perishable goods and respondent no.2 is giving indemnity bond and surety bond, request is refused.

[SHIVKUMAR DIGE, J.]

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