



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 313 OF 2024

1. Madan S/o. Ganpati Ubale,
Age : 62 years, Occu. : Agriculturist,
R/o. Sangaon, Tq. Ambajogai,
Dist. Beed.
2. Navnath S/o. Dagdu More,
Age : 45 years, Occu. : Agriculturist,
R/o. Sangaon, Tq. Ambajogai,
Dist. Beed.
3. Mrutunjay S/o. Dattatraya Anjan,
Age : 44 years, Occu. : Agriculturist,
R/o. Sangaon, Tq. Ambajogai,
Dist. Beed.
4. Vijaybhinandan S/o Dattataya Anjan,
Age 50 years, Occu. Agriculturist,
R/o Sangaon, Tq. Ambajogai,
District Beed.
5. Swayambhau S/o Sanjay Anjan,
Age 31 years, Occu. Agriculturist,
R/o Sangaon, Tq. Ambajogai, District Beed.
6. Sanjay S/o Dattatraya Anjan,
Age : 54 years, Occu.: Agriculturist,
R/o Sangaon, Tq. Ambajogai, District Beed.
7. Arjun S/o Eknath Anjan,
Age : 54 years, Occu. Agriculturist,
R/o Sangaon, Tq. Ambajogai, District Beed.
8. Haripandit S/o Eknath Anjan,
Age : 74 years, Occu. Agriculturist,
R/o Sangaon, Tq. Ambajogai, District Beed.
9. Dayanand S/o Haripandit Anjan,
Age : 39 years, Occu.: Agriculturist,
R/o Sangaon, Tq. Ambajogai, District Beed.

10. Gopal S/o Haripandit Anjan,
Age : 45 years, Occu. Agriculturist & Service,
R/o Sangaon, Tq. Ambajogai, District Beed. **...Applicants**

Versus

The State of Maharashtra,
Through Police Station Officer,
Police Station Ambajogai City,
Tq. Ambajogai, Dist. Beed. **...Respondent**

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Mr. Aakash D. Gade, Advocate for Applicants.
Mr. D. R. Korade, APP for Respondent - State.
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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 16th DECEMBER, 2024
PRONOUNCED ON : 19th NOVEMBER, 2024

ORDER :

1. In this revision, there is challenge to the order passed on application below Exh.189 by learned Additional Sessions Judge, Ambajogai in Sessions Case No. 74 of 2024.

2. Learned counsel for applicant pointed out that, above referred Sessions Case is in consequence to F.I.R. No.166 of 2013 arising out of order passed by learned J.M.F.C., Ambajogai by invoking section 156(3) of Cr.P.C. According to learned counsel, there is previous enmity between informant and present applicants. There is chequered history of litigation of both civil and criminal in nature. It is pointed out that, some of the proceedings on complaint

of respondent were thoroughly investigated and even filed by investigating machinery as summary proceedings.

3. That, again attempt was made to implicate present revisionists by approaching learned J.M.F.C. seeking exercise of powers under section 156(3) Cr.P.C.. However, according to learned counsel, the mandate and requirement laid down by statute and the Hon'ble Apex court, to first approach superior authority before invoking section 154(3) Cr.P.C. and the requirement of filing affidavit to that extent was not adhered too by the complainant respondent herein. That, learned J.M.F.C. without assigning reasons of its *prima facie* satisfaction passed mechanical order directing investigation. Therefore, said order was questioned before learned Additional Sessions Judge by filing application Exh.189 and praying to drop the proceedings. However, it is pointed out that, learned Additional Sessions Judge also did not appreciate and consider the essential requirements and dismissed the application by its order dated 17.10.2024 impugned herein.

4. Learned counsel further pointed out that rulings in the case of *Priyanka Srivastava v. State of Uttar Pradesh* reported in (2015) 6 SCC 287 and *S. P. Bodakhe and Ors v. State of Maharashtra* reported in MANU/MH/0863/2017 were also pressed into service.

But, learned Additional Sessions Judge took a view that proceedings being previous to above rulings of Hon'ble Apex Court, effect cannot be given retrospectively. Learned counsel pointed out that, in fact legal position has not been appreciated as in both cases it was not specifically stated that mandate laid down of 154(3) Cr.P.C. regarding approaching superior and filing affidavit would be only and only prospective.

5. Learned counsel further pointed out that, very recently also there is order of this Court (Bombay High Court) in Writ Petition No.3240 of 2014 i.e. in the case of ***Kamal J. Sheth v. State of Maharashtra and Another***, and specifically in paragraph nos.12, 14, 15, 19, 21, 23 and 24, it is reiterated that, law laid down in ***Priyanka Srivastava*** (*supra*) is retrospective. However, learned counsel fairly submitted that this ruling was not relied by revisionist before learned Additional Sessions Judge, Ambajogai and hence he made a specific prayer that opportunity may be given to the revisionists to seek reliance of above judgment by again approaching the Court of Additional Sessions Judge, Ambajogai for fresh consideration.

6. Learned APP supported the view taken by learned Additional Sessions Judge, Ambajogai, however, he conceded that necessary directions, if the court so desires in respect of above

prayer of remanding the matter for fresh consideration, may be given.

7. After considering the submissions of both sides, it transpires that, issue revolves around requirement of filing affidavit by complainant while invoking section 156(3) Cr.P.C. affirming the necessary compliance being made before seeking exercise of powers to direct investigation and registration of crime. Law to this extent has been crystallized in the case of ***Priyanka Srivastava*** (*supra*) which was passed in 2015. Now, recently in 2024, in the judgment of ***Kamal J. Seth*** (*Supra*), view as regards to whether mandate in ***Priyanka Srivastava*** (*supra*) is prospective or retrospective has been crystallized. Admittedly, said judgment was not taken recourse to by revisionists while application (Exh.189) was pressed into service. Therefore, apparently, there was no opportunity for learned Additional Sessions Judge, Ambajogai to appreciate the case of revisionists.

Consequently, in all fairness, as prayed and as revisionist is ready to approach the court of learned Additional Sessions Judge to re-agitate the issue, there is no reason to refuse such prayer so advanced before this court as it would be just and proper for the trial Judge itself, which is seized of the very sessions case to deal with legal aspect arising herein. Hence, the following order is passed :-

ORDER

(i) The impugned order dated 17.10.2024 passed below Exh.189 by learned Additional Sessions Judge, Ambajogai in Sessions Case No. 74 of 2024 is hereby set aside.

(ii) Matter is remanded back to the file of learned Additional Sessions Judge, Ambajogai, who shall conduct hearing afresh on being approached by revisionists, more specifically, on the issue of retrospective or prospective effect of section 154(3) Cr.P.C. for passing appropriate order.

(iii) Parties shall appear before the learned trial court on 06.01.2025 and there shall be no need for the trial court to issue any notice to them.

(iv) The learned trial court shall make every endeavour to decide the application afresh as expeditiously as possible and in any event within one month from the date of appearance of the parties.

(v) The Criminal Revision Application stands disposed off.

(ABHAY S. WAGHWASE, J.)