



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 99 OF 2022

Nandkumar Wamanrao Mahajan
Age: 53 years, Occu: Business,
R/o. Vasantnagar, Nanded,
Tq. & Dist. Nanded.

...PETITIONER

VERSUS

- 1] Vilas Wamanrao Mahajan,
Age: 53 years, Occu: Business,
R/o. Vasantnagar, Nanded,
Tq. & Dist. Nanded.
- 2] Anandrao s/o Manikrao Lathkar,
Age: Major, Occu: Nil.,
Secretary Vasantnagar Bhadekaru Grah
Nirman Sanstha, Vasantnagar, Nanded,
Tq. & Dist. Nanded.
- 3] The State of Maharashtra
Through AGP/PP, Bombay High Court,
Bench at Aurangabad.

...RESPONDENTS

WITH
CRIMINAL WRIT PETITION NO. 328 OF 2022

Anandrao s/o Manikrao Lathkar,
Age: 81 years, Occu: Nil.,
R/o. Vasant Nagar, Nanded,
Tq. & Dist. Nanded.

...PETITIONER

VERSUS

- 1] Vilas Wamanrao Mahajan,
Age: 53 years, Occu: Business,
R/o. Vasant Nagar, Nanded,
Tq. & Dist. Nanded.
- 2] Nandkumar Wamanrao Mahajan
Age: 53 years, Occu: Business,
R/o. Vasantnagar, Nanded,
Tq. & Dist. Nanded.

...RESPONDENTS

Mr. A. M. Gaikwad, Advocate for petitioner in WP/99/2022.

Smt. A. S. Deshmukh, APP for Respondent-State in both WP.

Mr. Chaitanya V. Dharurkar, Advocate for Respondent No.1.

Mr. Rohit R. Kakani, Advocate for petitioner in WP/328/2022 and Respondent No.2 in WP/99/2022.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 21st AUGUST 2025.

PRONOUNCED ON : 23rd SEPTEMBER 2025.

JUDGMENT :-

1. Heard the parties.
2. Rule. Rule made returnable forthwith. Since both the petitions are arising out of same proceedings, those are taken up together. With

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consent of the parties, petitions are taken up for final disposal, at the stage of admission.

3. The petitioner in WP/99/2022 is original accused No.1 in a complaint bearing R.C.C. No.204 of 2009. The petitioner, in Writ Petition No. 328/2022, is the accused No.2 in the complaint. The respondent No.1 has now stepped into shoes of the complainant. For the purpose of convenience, the parties are referred to as per Criminal Writ Petition No. 99/2022.

4. The present petitioners have approached this Court challenging the Judgment and Order dated 23rd December 2021, passed by the learned Sessions Judge, Nanded in Criminal Revision Application No. 85 of 2018. The petitioners are original accused in the criminal case.

5. By way of impugned Judgment and Order, the learned Sessions Judge, Nanded, allowed the Revision Application and set aside the order passed by the learned JMFC, on an application Exh. 139, by which the learned JMFC dismissed the complaint filed by Respondent namely, Vilas

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Wamanrao Mahajan, and directed the parties to appear before the learned Magistrate.

6. The facts, in short, are that the deceased Wamanrao, the father of present petitioner and Respondent No.1, had filed a complaint bearing RCC No.204 of 2009, in the Court of learned JMFC, Nanded, for the offences punishable under Sections 420, 463, 465, 466, 468, 471 and 192 read with 34 of the Indian Penal Code, 1860 against the present petitioner and petitioner in WP/328/2022.

7. In the complaint it is alleged that, he was the owner and possessor of one property house, namely, Premila Niwas bearing Municipal Corporation House No.1-18-998, plot No.116-42/B and 29/A, situated at Vasant Nagar, Nanded. The said plot is in the housing society where the accused No.2 was Secretary. It is alleged that, because of his health conditions, the present petitioner was insisted for family arrangement by way of partition. The partition was, therefore, affected. It is alleged that the petitioner, by producing the forged document in connivance with

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respondent No.2, got the plot entered in his name in the record of housing society and got the allotment letter issued.

8. The learned JMFC recorded verification statement, and on receipt of the complaint, directed an inquiry under Section 202 of Cr.P.C. Thereafter, on verification statement and receipt of the report from the police, for opinion that, complaint makes out a *prima facie* case, issued process against the accused persons. Thereafter, the deceased Wamanrao did not take any steps in the case. The Magistrate, therefore, dismissed the complaint for default by order dated 20.09.2010. The deceased Wamanrao Mahajan preferred a revision. In the said revision, the learned Sessions Judge set aside the order of dismissal and restored the file to its position.

9. The respondent No.2 approached this Court by filing Writ Petition No.235/2012. On 28.04.2016, the said writ petition came to be disposed off as, in the meantime, the complainant expired and the complaint rendered infructuous. This Court set aside the proceeding as it is not

sustainable. While passing the order, this Court observed that the legal heirs of the complainant would be at liberty to take steps as are available and permissible in law.

10. After disposal of Criminal Writ Petition, respondent No.1 approached the trial Court seeking permission to continue the case and to add him as a complainant and to lead evidence. The said application on Exh.132 came to be allowed by order dated 01.02.2017. The accused, thereafter, approached the trial Court by filing application Exh.139, pointing out that the complaint needs to be dismissed as it was dismissed as per Section 245(2) of the Cr.PC. The order in the revision is also set aside as infructuous restoring the complaint itself was illegal. The learned JMFC, on considering the application, dismissed the complaint and allowed the application. Against that, Criminal Revision Application No.85/2018 was preferred and the impugned order came to be passed.

11. Mr. Gaikwad, the learned Advocate for the petitioner/original

accused, vehemently argued that there was already civil suit bearing RCC No.835/2006 filed, wherein a decree is passed in favour of the petitioner. A compromise took place between the father and brother. Each got 1/3 share and decree was passed. The petitioner, therefore, applied for associate membership in the Society and his name came to be recorded. Father, during his lifetime, had filed a suit bearing No. 60/2010 challenging the partition decree. However, the said suit came to be dismissed by order dated 01.01.2011 as dismissed for default. Father had executed a gift deed dated 24.11.2008 in favour of son of respondent No.1 that was challenged by filing suit bearing Special Civil Suit No. 122/2011. In that suit, the respondent admitted partition. Temporary injunction in that suit came to be rejected. However, Misc. Civil Appeal filed by the petitioner was allowed on 17.04.2018. He submits that, when rights of the parties were crystalized in civil proceedings, there was no question of filing criminal complaint. The revision ought to have been dismissed. When the petition was pending, though this Court by order granting liberty to the legal heirs to prosecute

the complaint. There was no question of respondent in prosecuting the complaint as the order in the revision was set aside and the order of dismissal of the complaint attained finality. At the most, the respondent could have filed independent complaint. Complaint was filed under Section 420 of IPC and other Sections. There is no question of legal heirs prosecuting the said complaint. He thus submits that learned JMFC has rightly considered all the aspects and dismissed the complaint. Once the complaint is dismissed for default, there is no question of continuing the said complaint. He thus prays for allowing the writ petition.

12. Mr. Dharurkar, the learned Advocate for respondent No.1, vehemently submits that there is clear allegation by the deceased Wamanrao that his signature was forged by the present petitioner. This Court in writ petition had specifically directed, in clause (iii), that the legal heir can prosecute the complaint. It is in that view, the learned JMFC had rightly passed the order on application Exh.132. Once having restored the complaint, the same could not have been dismissed on application Exh.139. There is substance in the complaint on merits, and

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therefore, the complaint needs to be prosecuted.

13. During the course of argument, the parties relied upon the following judgments:

- (i) *Chand Devi Daga and Ors. Vs. Manju K. Humatani and Ors.*¹;
- (ii) *Ashwin Nanubhai Vyas Vs. The State of Maharashtra and Anr.*²;
- (iii) *Jimmy Jahangir Madan Vs. Bolly Cariyappa Hindley*³.

14. After hearing the parties, this Court has to consider as to whether the order passed on Exh.139 and subsequent order is correct. Whether the order passed by the learned Sessions Judge, setting aside the order passed by the learned JMFC on an Application Exh.139 needs interference.

15. On going through the record and the submissions, it is seen that deceased Wamanrao had filed a complaint against the present petitioner, wherein respondent No.1 was not in picture. The said complaint came to

1 (2018) 1 SCC 71

2 AIR 1967 SC 983

3 AIR 2005 SC 48

be dismissed for want of prosecution under Section 245 of sub-Section (2) of Cr.P.C.. The said order was set aside in Revision Application. The respondent No.2 original accused filed a writ petition. In that view, the order passed in the revision was setting aside. However, it allowed the legal heirs, who were not in picture, to prosecute the complaint. The learned JMFC restored the complaint. The petitioner filed an application for dismissal of complaint, as there was restoration and the same came to be allowed. The Sessions Court found that complaint could be prosecuted and directed the parties to appear. Section 245 of Cr.P.C. reads as under:

“245. When accused shall be discharged.

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.”

16. Against dismissal of the complaint, revision/appeal was filed by the complainant.

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17. The question would be thus as to whether the complaint was restored in the writ petition? Though leave was granted, the question is whether the complaint, which was already dismissed, would revive when the order of the Sessions Court is specifically set aside. This Court finds that the answer has to be no. The application Exh.132 is thus wrongly entertained by restoring the complaint. Once the complaint is dismissed under Section 245(2) of the Cr.P.C., there was no question of allowing the application Exh.132.

18. In the case of *Chand Devi Daga and Ors.* (supra), the Hon'ble Apex Court held that after death of complainant in a summons case, it is not mandatory to reject the complaint by exercising the power under Section 256(1) of Cr.P.C. The learned Magistrate can proceed with the complaint on the death of the complainant. The procedure for trial of the summons case is not applicable and there is no provision in Chapter XIX, i.e., trial of warrant cases by Magistrates containing a provision that in the event of death of the complainant, the complaint is to be rejected.

19. In the case of ***Ashwin Nanubhai Vyas*** (supra), the Hon'ble Apex Court considered bar under Section 198 of Cr.P.C. (under the old Code, "Cr.P.C. 5 of 1898"). It was held that the presence of the aggrieved person throughout trial is not necessary. The Court cannot substitute a new complainant. However, it has the power to authorize conduct of the prosecution by any person.

20. In the case of ***Jimmy Jahangir Madan Vs. Bolly Cariyappa Hindley*** (supra), the Hon'ble Apex Court held that, the proceeding was arising out of prosecution for an offence under Section 138 of the Negotiable Instruments Act. The original complainant died during trial. The power of attorney holder of the legal heirs of the complainant filed application. The Hon'ble Apex Court held that such application is not permissible. It is only the legal heir, who can file such application. The power of attorney holder cannot be said to be a pleader of the legal heir.

21. Coming to the facts of the present case, it is not a case that the complaint is dismissed on the death of the complainant, it is dismissed

for want of prosecution under Section 245(2) of Cr.P.C. Section 245(2) Cr.P.C. speaks of discharge of the accused. When the accused is discharged, it has the effect of acquittal. Thus, when the complaint was dismissed, it was for the complainant therein to prefer an appeal against acquittal. That was not done in the present case and instead a revision was filed.

22. Be that as it may, the revision was entertained and against that the writ petition was filed. This Court, while dismissing the writ petition, has clearly observed that the petition became infructuous. The order of the Sessions Court was set aside. There was no question of Respondent No.1 thereafter filing an application under Exh. 132 in the trial Court. The learned trial Judge committed a mistake in entertaining the same. However, on pointing it out by application Exh.139, the learned Magistrate has rightly passed the order. The learned Sessions Judge, however, failed to appreciate this position and allowed the revision petition filed by the respondent. This Court does not find any illegality or perversity in the order passed by the learned Magistrate. This Court

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therefore finds that the revisional Court erred in allowing the revision.

The petitions deserve to be allowed. Hence, the following order:

ORDER

- (i) Criminal Writ Petition Nos.99/2022 and 328/2022 stand allowed.
- (ii) The impugned order dated 23rd December 2021 passed by the learned Sessions Judge, Nanded, in Criminal Revision Application No.85/2018 is quashed and set aside.
- (iii) Rule made absolute in above terms.
- (iv) With this, Criminal Writ Petitions stand disposed off.

[KISHORE C. SANT, J.]