



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

CRIMINAL WRIT PETITION NO. 1471 OF 2023

Smt. Jayashri Kishabapu @ Kishor Jangam
Age: 61 years, Occ: Housewife,
R/o: 712, Bazarpeth, Swami Vivekanand Chowk,
Tq. Sangamner, Dist: Ahmednagar ... **PETITIONER**

VERSUS

- 1) The State of Maharashtra
Through its Secretary
Home Department,
Mantralaya, Mumbai
- 2) Radhakishan Sayaji Shinde
Age: 66 yrs, Occ: Advocate
R/o: Vakil Colony, Sangamner,
Tq. Sangamner, Dist: Ahmednagar ... **RESPONDENTS**

....

Mr. P. D. Digraskar, Advocate h/f Mr. M. C. Swami, Advocate for
the Petitioner

Mr. K. K. Naik, APP for Respondent No.1

Mr. S. K. Shinde and Mr. V. S. Bedre, Advocates for Respondent
No.2

....

CORAM : Y. G. KHOBRAGADE, J.

RESERVED ON : 07.02.2025

PRONOUNCED ON : 18. 02.2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the
consent of both the sides heard finally at the stage of admission.

2. By the present Petition under Article 226 and 227 of the Constitution of India, the Petitioner takes exception to the order dated 12.05.2023, passed by the learned Additional Sessions Judge, Sangamner, in Criminal Revision No.22 of 2022, thereby set aside order of issuance of process passed by the learned J.M.F.C./3rd Joint civil Judge, Junior Division, Sangamner, on 30.04.2022, below Exh.1 in Criminal M.A. No.714 of 2021.

3. The present Petitioner is the original complainant and the present Respondent No.2 is the original accused No.3 in Criminal Misc. Application No.714 of 2021. For the sake of brevity, the parties to the present Petition hereinafter will be referred to in their original capacity.

4. The complainant filed a Criminal complaint bearing M.A. No.714 of 2021 and thereby prayed for initiation of criminal proceeding against Accused Nos. 1 to 3 for offences punishable under Section 467, 468, 420 read with Section 34 of Indian Penal Code (hereinafter referred as IPC).

5. The complainant alleged that, the accused No.1 is her daughter-in-law, accused No.2 is an L.I.C. agent and Accused No.3 is a Notary Advocate. Her son and husband of the Accused no. 1 namely Dr. Amol Jangam, was a Covid-19 warrior and he died due to a Covid-19 infection while treating patients in the Hospital. The State Government declared awarding of monetary relief of Rs.50,00,000/- (Rupees Fifty Lakh) toward compensation due to death of her son Dr. Amol. However, the accused No.1, her daughter-in-law, in collusion with accused Nos. 2 and 3 fraudulently Notarized the document falsely showing her consent for withdrawal of compensation amount in favour of accused No.1. The complainant further alleged that, the accused Nos. 1 to 3 have manufactured false and fabricated documents and got notarised said documents, therefore, the Accused has committed offences under Section 467, 468, 420 read with Section 34 of I.P.C.

6. On 30.04.2022, the learned J.M.F.C./ 3rd Joint C.J.J.D. Sangamner, passed an order and issued process under Section 467, 468, 420 read with 34 of I.P.C., against accused No.1 daughter-in-law (wife of deceased) and the accused No.3 the Notary but

dismissed the complaint as against accused No.2, L.I.C. Agent on ground that, the accused No.1 in collusion with accused No. 3 executed Notary document “Article “F”, which is registered by accused No.3 though the Petitioner was not present while execution of the document Article "F". Since, the accused No. 3/Respondent No.2 got registered the said document, hence, he with common intention committed offences and helped the accused No.1 to fraudulently withdraw the compensation.

7. Being aggrieved by order of issuance of process dated 30.04.2022, the Accused No.3 filed Criminal Revision No.22 of 2022 before the Sessions Court. On 12.05.2023, the learned Additional Sessions Judge, Sangamner, passed the impugned order holding that, the Accused no. 3, being a Public Notary under the Notaries Act and notarised the Affidavit Article-F in violation of provisions of Notary Act and Rules with an intention to misappropriate amount of compensation, which is professional misconduct. Therefore, the Respondent no 3 can only be prosecuted by the competent officer authorised by the State or Central Government as provided under Rule 13 of the Notaries

Rules, 1956. Therefore, the order of issuance of process against accused no. 2 was set aside. Being aggrieved by said order, the complainant has presented this petition.

8. The learned counsel for the Petitioner canvassed that, the learned Revisional Court failed to consider the material and statement of the present Petitioner that, Respondent No.2 while discharging the duty being a public Notary, in collusion with the original accused No.1, Notarized documents falsely showing that, the complainant/ Petitioner has consented for withdrawal of compensation amount in favour of the Accused no. 1 though she (Petitioner) was not present before the Respondent No.2 Notary while execution of the Affidavit. So also, the documentary evidence and police inquiry report reveals that on the day of execution of Article "F" Notary Affidavit, the present Petitioner/complainant was not present before the Accused No. 3. As per the CDR of the petitioner's mobile show that, she was at a different location than where Article "F" Notary Affidavit has been executed. However, the learned revisional Court passed the impugned order without considering primary evidence available on

record. Therefore, prayed to quash and set aside the impugned judgment and order.

9. The learned counsel for the Petitioner further canvassed that, Section 13 of the Notaries Act provides about taking cognizance of offence. Section 8 of the Notaries Act provides functions of the Notaries. The protection under the Notaries Act is provided only in cases of vexatious litigation, however, in case-in-hand, there is *prima-facie* documentary evidence emerging from judicial and police inquiries, indicating involvement of the Respondent No.2/Accused no. 3 while commission of the offence under Sections 467, 468, 420 read with 34 of I.P.C. Therefore, Respondent No.2/Accused no. 3 has not made out a *prima-facie* case for discharge from the said offences.

10. In support of these submissions, the learned counsel for the Petitioner placed reliance on the judgment dated 06.06.2023 passed by the Coordinate Bench of this Court at Nagpur (Coram: G.A. Sanap, J.) in ***Criminal Writ Petition No.602 of 2022, Smt. Seema Hitesh Khandelwal Vs. State of Maharashtra and another***, wherein it is held that, the accused Notary is not entitled to invoke

the protection provided under Section 13 of the Notaries Act, 1952.

On face of the record, the accused became part of a conspiracy, as observed in paragraph 32, thus:-

“32. In my view, the facts of the case on hand and the facts of the decisions relied upon by the learned Senior Advocate are clearly distinguishable. The decisions, in my view, therefore, are not applicable to the case of the accused at this stage. On the basis of the proposition of law laid down in those decisions the accused No.5 is not entitled to invoke the protection provided under Section 13 of the Act of 1952. The prosecution has come before the Court with the case that the will deed was forged pursuant to the conspiracy hatched by the accused. The object of the execution of the will deed was to deprive the informant of her right in the property. The accused took the conspiracy to logical end by bringing into existence the will deed. The accused No. 5, as can be seen from the prima facie material on record, became part of the conspiracy. The act of attestation of will deed by accused No. 5, as stated above, would indicate that accused No. 5 shared the object of the conspiracy. The notary became the part of the conspiracy to provide authenticity to the will deed. The material on record is sufficient to attribute the intention and object to accused No. 5 in the commission of crime. The notary, as can be seen, succumbed to the wishes of the remaining accused and became a part of the conspiracy. It is to be noted that the act of attestation of execution of the will deed, in the manner stated above, by accused No. 5 was a master stroke to take the conspiracy to logical conclusion. In my view, in the backdrop of the above stated stark facts and evidence, accused No. 5 was not entitled for discharge. Learned CJM has failed to consider the above position. Therefore, the order passed by the learned CJM cannot be sustained.”

11. Per contra, the learned counsel appearing for Respondent No.2 canvassed in vehemence that, the Respondent No.2 being a Notary registered Notary Affidavit Article "F" while discharging his statutory duty contemplated under the Notary Act. Therefore, if any act is committed while discharging the statutory duty, the protection under Section 13 of the Notaries Act, is needs to be extended to Respondent No.2/Accused no. 3. So also, the complaint as against the Respondent No.2 is not tenable at the hands of the Petitioner, unless the authorized officer of the Central Government or State Government lodge a written complaint with due sanction. The Petitioner has not obtained any such prior permission to prosecute the Respondent no. 2/accused no. 3. Therefore, the complaint itself is not tenable. Therefore, prayed for dismissal of the Petition.

12. In support of these submissions, the learned counsel for the Petitioner placed reliance on *Ayaz Ahamed Khan Vs. The State of Maharashtra and another, 2013 ALL MR (Cri.) 522*, wherein it is held that, the Petitioner is a Notary Advocate Notarized the document in respect of the owner of the plot of Smt.

Vinita Deshpande concerning MHADA allotment and subsequently it revealed that Smt. Vanita Deshpande was abroad at the material time when the document was purportedly notarized and consequently, the Petitioner as a Notary has been prosecuted. Under these circumstances, the Investigator not prosecuted the advocate who has identified the person before execution of said document or notarising the same. Therefore, it is held that the Notary is not expected to know the genuineness of party. Hence, there could not be the prosecution of the Petitioner notary for the offences under Section 420, 465, 467, 468, 471 r/w Section 34 of I.P.C.

13. It further relied on *Devyani d/o Govind Ambilwade Vs. State of Maharashtra and others, 2020 (4) Mh.L.J. (Cri.) 606*, wherein it is held that, no Court is allowed to take cognizance against the notary unless a complaint in writing is filed by officer authorized by the Central Government or the State Government.

14. It further relied on the case of *Brahmadev R. Dube Vs. State of Maharashtra and another, 2014(3) Mh.L.J. (Cri.) 234*, wherein it is held thus:-

“It is submitted that notary public was under an obligation to take care that the document is signed by a person who appeared before him and the photograph pasted on her document belonged to the same person. No doubt, the notary public was under an obligation to take care that the deponent who signed the document was the same person in whose name the document was signed. At the same time, it cannot be ignored that section 13 not only protects the notary from the alleged offences committed in exercise of his functions but it also protects the purported exercise of said functions. Had the act of notary/petitioner been is totally extraneous to his duties, the protection under section 13 would not have been available to him.”

15. In case-in-hand, it *prima-facie* appears that, the Petitioner lodged a Criminal Complaint M.A. No.714 of 2021 alleging that, her son Dr. Amol Jangam was a Covid warrior and died on 05.05.2021 due to infection of Covid while discharging his duty being a Medical Officer with Primary Health Centre, Sangamner. The present Petitioner is one of the legal heirs along with accused No.1 and her grand-children. However, the accused No.1 allegedly in connivance with the Respondent no. 2/Accused No.3 got registered a document Article "F" Affidavit showing that, the present Petitioner consented for withdrawal of compensation of Rs.50,00,000/- in favour of accused No.1. As per the witnesses statement recorded by the Investigating Officer and statement of the present Petitioner/complainant it shows that, w.e.f. 06.06.2021

till 21.06.2021, the Petitioner Smt. Jayshri Kishababu Jangam was at Pathardi and Baramati with witness Shri Vivek Sadashiv Shelgaonkar. As per tower location of mobile, the Petitioner's mobile was within the tower location of village Pathardi and Baramati on the date of execution of Notary Affidavit Article "F". On 17.06.2021, the accused No.1 in connivance with present Respondent No.2 Notary advocate executed/notarized Article "F" alleging that, the present Petitioner consented for withdrawal of amount of compensation in favour of accused No.1, though she was not present while registration of Article "F" by the Accused No.3.

16. In the judgment dated 06.06.2023 passed by the coordinate Bench of this Court in the case of ***Smt. Seema Hitesh Khandelwal***, cited (supra) it is held that, when the Notary become a part of conspiracy to provide an authenticity to the Will-Deed and the material on record is sufficient to attribute the intention and object in commission of crime, the Notary is not entitled for discharge and he is not entitled for the protection provided under Section 13 of the Notaries Act.

17. Similarly, in case in hand, material placed on record, *prima-facie* appears that the photographs of the Petitioner and her daughter-in-law are pasted on document Article-F Notary Affidavit. There is no identification of the Petitioner by any other Advocate. Thereafter the Respondent No.2/Accused no. 3 has affixed Notary Seal on it and got notarised Article- G Affidavit. The contents of Article-F Affidavit shows that, the petitioner/complainant has consented for withdrawal of compensation amount in favour of her daughter-in-law Accused no. 1.

18. No doubt the Respondent No.2 is a Notary Advocate and he is governed under the provisions of Notaries Act and Rules. Section 8(1)(e) of Notaries Act provides that, “*a notary may administer oath to or take affidavit from any person.*” Rule 13 of Notary Rules provides inquiry into the allegations of professional or other misconduct of a notary either suo-motu by the appropriate Government or on a complaint received in that regard.

19. In case in hand, on perusal of photo copy of the notarized document Article-F it appears that, the present

Respondent No.2/Accused no. 3 has registered the affidavit without identification of the Petitioner by any other legal practitioner/Advocate. The deponent Smt. Jayshree Kishabapu @ Kishor Jangam specifically stated said fact on oath. The Respondent No.2 being a notary put his seal with the endorsement that this affidavit made before him. The photograph of Petitioner and photograph of her daughter-in-law accused no. 1 pasted on the document. Thereafter the Respondent No.2 has put his seal on it. Therefore it *prima-facie* shows that whatever role played by the Respondent No.2 while execution of Article "F" Notary Affidavit to conduce the Accused no.1 in furtherance of common intention. Admittedly, the document Article-F reflect that, the Respondent No.2 himself confirmed that the deponent person is present before him. Therefore, it is to be considered the professional misconduct/negligence. No doubt, Notaries Act differentiate the misconduct and negligence of the Notary while functioning under the said Act and Rules. However, considering the role played by the Respondent No.2 it shows he acted to conduce the Accused no. 1 and he is become a part of the conspiracy while execution of document Article "F" in absence of the present Petitioner. However,

the learned revisional Court without considering scope of Section 8(1)(e) of the Notaries Act and Rule 13, quashed and set aside the process against Respondent No.2 for the offence punishable under Section 467, 468, 420 read with Section 34 of I.P.C., hence, it is not sustainable in eyes of law, hence, it is liable to be quashed and set aside.

20. In view of above discussions, the impugned order dated 12.05.2023 passed by the learned Additional Sessions Judge, Sangamner in Criminal Revision No.22 of 2022 is hereby quashed and set aside. The order below Exh.1 dated 30.04.2022 in Cri.M.A. No.714 of 2021 passed by the learned J.M.F.C. / 3rd Joint C.J.J.D., Sangamner, is hereby restored.

21. Accordingly, the Writ Petition is allowed. Rule is made absolute in above terms.

[Y. G. KHOBRAGADE, J.]

SMS