



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

915 CRIMINAL WRIT PETITION NO. 1815 OF 2022

Vandana Kanhiya Yashwante,
Age: 42 years, Occu: Household,
R/o Plot No.69, N-9 Ranjwan
Housing Society, Aurangabad

**... PETITIONER
(Original Complainant)**

1. The State of Maharashtra,
Through Police Inspector,
Police Station Cidco, Aurangabad
2. Namdev S/o Eknath Gore,
Age: 39 years, Occu: Private job,
R/o Plot No.20, Vinayak Colony,
Naik Nagar, Near Venkatesh Public
School, Beed bypass, Aurangabad
3. Maya W/o Namdev Gore,
Age 36 years, Occu: Household,
R/o Plot No.20, Vinayak Colony,
Naik Nagar, Near Venkatesh Public
School, Beed bypass, Aurangabad
4. Chayya W/o Sitaram Yashwante,
Age: 55 years, Occ: Private service,
R/o Plot No.69, N-9, Ranjanwan,
Housing Society, Aurangabad
5. Dilip S/o Sitaram Yashwante,
Age: 35 years, Occu: Private Service,
R/o Plot No.69, N-9, Ranjanwan,
Housing Society, Aurangabad
6. Manisha W/o Dilip Yashwante,
Age: 30 years, Occu: Household,
R/o Plot No.69, N-9, Ranjanwan,
Housing Society, Aurangabad

7. Sunil S/o Balbhim Mulajkar,
Age: 59 years, Occu: Business,
R/o N-8, Bajrang Chowk,
Cidco, Aurangabad ... **RESPONDENTS**

....

Mr. M. S. Karad, Advocate for the Petitioner
Mr. S. M. Ganachari, APP for Respondent No.1-State
Mr. S. S. Randive, Advocate for Respondent Nos. 2 to 6

CORAM : Y. G. KHOBRADE, J.

DATE : 28.01.2025

Oral Judgment :-

1. Rule. Rule made returnable forthwith and with consent of both the sides it is 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 08.11.2022 passed by the learned Extra Joint District Judge and Additional Sessions Judge, Aurangabad, in Criminal Revision Application No.73 of 2022, thereby set aside order of issuance of process passed by the Judicial Magistrate First Class, Aurangabad, on 23.12.2021 in Criminal Misc. Application No.343 of 2020 for the offense punishable under Section 420, 467, 468, 504, 506, 379 read with Section 34 of Indian Penal Code.
3. The Petitioner is the original Complainant and the Respondent Nos. 2 to 7 are the original accused Nos. 1 to 6. For the

sake of brevity parties to the present Petition will be referred in their original capacity.

4. The Complainant filed a complaint R.C.C. No.3277 of 2021 alleging that, her father Shri Kanhaiya Govindrao Yashwante was serving as Police Inspector with the Police Department. After retirement of her father he was maintaining family of his younger brother Shri Sitaram Yashwante i.e. Complainant's uncle. Her father had purchased a flat in Nandanvan Colony, Bhavsingpura in the name of her uncle Shri Sitaram Govindrao Yashwante. However, her uncle was sold said flat to meet marriage expenses of his daughter. The Complainant further alleged that, in the year 2005 her father purchased a vacant plot at Chikalthana and raised construction. But her uncle Sitaram was temporary permitted to stay in said House. On 29.09.2010, her father Shri Kanhaiya Govindrao Yashwante died but during life time of her father a Gift-Deed was executed in her favour on 07.01.2008 and said Gift-Deed duly registered with Public Notary.

5. The complainant further alleged that, the accused No. 3, her Aunt and her cousins Ms. Chaya, Ms. Maya and Shri Dilip, who are married but her cousin sister Ms. Maya (Accused No. 2) and her husband Shri Namdev Eknath Gore (Accused No. 1) started residing

as a tenant in her house. According to the Complainant, after the death of her father, the Accused no. 1 Mr. Namdev Eknath Gore, her cousin brother Shri Dilip (Accused No. 4) executed false and fabricated Will Deed on 100/- Rupees Stamp Paper and under the false and fabricated signature of her father got registered with the Notary. Therefore, the accused have committed offences under Section 420, 467, 468, 504, 506, 379 read with Section 34 of Indian Penal Code, hence, prayed for investigation under Section 156(3) of Code of Criminal Procedure.

6. On 17.12.2021, the learned Judicial Magistrate First Class, Aurangabad passed an order and declined to issue directions for investigation under Section 156(3) of the Code of Criminal Procedure and called upon the Complainant to give her statement under Section 202 of Cr. P. C. Accordingly, the Petitioner testified her statement on oath u/s 202 of Cr.P.C. On 23.12.2021, the learned Judicial Magistrate First Class, Aurangabad passed the order and issued process against the accused Nos. 1 to 6 for the offenses punishable under Section 420, 467 and 468 read with Section 34 of IPC.

7. Being aggrieved by the said order of issuance of process,

Respondent Nos. 2 to 7 invoked jurisdiction under Section 397 of Cr.P.C., by filing Criminal Revision Application No.73 of 2022. On 08.11.2022, the learned Revisional Court passed the impugned order holding that, the dispute involved in complaint is of civil nature. The complainant already initiated probate proceeding and it is pending before the Competent Court. Therefore, quashed and set aside the order of issuance of process passed by the learned Judicial Magistrate First Class on 23.12.2021.

8. The learned counsel for the Petitioner canvassed in vehemence that, the learned Sessions Court failed to appreciate the fact that, the Petitioner / Complainant has made out *prima-facie* case and after satisfaction, the learned Judicial Magistrate issued process on 23.12.2021 against the Respondents / Accused. Further, the learned Revisional court failed to consider about preparation of false and bogus Will-Deed under the signature of complainant's father and entrusted property of her father. Therefore, the act on part of the Respondents / accused amount to forgery and transferring of property in their names on the basis of forged and fabricated documents.

9. Per contra, the learned counsel for the Respondent Nos. 2 to 7 supported the findings recorded by the learned Revisional Court.

It is canvassed that, the Respondent Nos. 2 and 3 have already initiated MARJI No.752 of 2017 a probate proceeding, wherein the present Petitioner / Complainant is a party objector and said proceeding is pending before the Competent Court. The fact of pendency of civil proceeding is not denied by the Petitioner / Complainant.

10. On perusal of complaint it *prima-facie* appears about existence of civil dispute in respect of property. The averments made in the complaint are based on two documents i.e., Will-Deed dated 20.10.2009 and Gift-Deed dated 07.01.2008. Therefore, the issue of execution of Will-Deed or Gift-Deed can be decided by the civil Court after both the parties are laid evidence.

11. It is trite settled principle of law that, the dispute of civil nature cannot be settled by setting in motion of the criminal law or by invoking provisions of Penal law. Therefore, I find that, findings recorded by the learned Revisional Court are not perverse, illegal, bad in law and no interference is called at the hands of this Court. Hence, the Petition is dismissed.

[Y. G. KHOBRAGADE, J.]