



(1)

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

CRIMINAL WRIT PETITION NO. 1623 OF 2024

Bhagyashri Wd/o Anil Waghmare

VERSUS

Anil s/o Machindra Waghmare, Since died, through his Mother As A
Nominee Sindhu Machindra Waghmare

.....

Mr Manoj D. Shinde, Advocate for Petitioner

Mr Suraj V. Gundre, Advocate for Respondent

WITH

**CRIMINAL APPLICATION NO. 3367 OF 2025
IN WP/1623/2024**

Smt. Diksha w/o Anil Waghmare And Another

VERSUS

Bhagyashri Anil Waghmare And Another

.....

Mr M. G. Kedar, Advocate for Applicants

Mr Manoj D. Shinde, Advocate for Respondent No.1

Mr S. V. Gundre, Advocate for Respondent No.2

WITH

CRIMINAL WRIT PETITION NO. 2078 OF 2024

Anil Machindra Waghmare, since died, thr. Sindhu Machindra
Waghmare (mother)

VERSUS

Bhagyashri Anil Waghmare

.....

Mr Suraj V. Gundre, Advocate for Petitioner

Mr Manoj D. Shinde, APP for Respondent/State

.....

CORAM : SUSHIL M. GHODESWAR, J.

**RESERVED ON : 10 SEPTEMBER 2025
PRONOUNCED ON : 16 SEPTEMBER 2025**

ORDER :

CRIMINAL APPLICATION NO.3367/2025

1. This is an application for addition of the applicants in this application as a party respondents in Criminal Writ Petition No.1623/2024.

2. Having heard the submissions of the respective sides and for the reasons stated in the application, the same is allowed and stands disposed of.

3. Addition of the applicants in Criminal Writ Petition No.1623/2024 be carried out forthwith.

CRIMINAL WRIT PETITION NO.1623/2024

4. Heard Mr Shinde learned Advocate for the Petitioner, Mr Gundre, learned Advocate for Respondent and learned Advocate Mr Kedar for the added respondents.

5. The Petitioner has put forth prayer clauses (B), (C) and (D), which read as under :-

(3)

(B) The impugned common order dated 21.08.2024 to the extent of Clause 3 and 4 passed on application below Exhibit 1 and 83 in E.R. Petition No.26/2018 and Exhibit 1, 29 & 31 in Petition E.R. No.61/2022 passed by learned Judge, Family Court, Latur may kindly be quash and set aside.

(C) Pending hearing and final disposal of the present Writ Petition grants stay to Clause No.3 and 4 passed on application below Exhibit 1 and 83 in E.R. Petition No.26/2018 and Exhibit 1, 29 & 31 in Petition E.R. No.61/2022 passed by learned Judge, Family Court, Latur.

(D) During pendency of this Criminal Writ Petition the Branch managers of respective LIC Office mentioned in Clause 3 and 4 of impugned order dated 21.08.2024 may kindly be restrained to disbursed the amount in favour of respondent.”

6. According to the Petitioner, marriage between her and late Anil Machindra Waghmare was solemnized on 05/02/2012. Since the relation between them were stained, the Petitioner had left company of the deceased Anil. On 24/12/2015, the Petitioner filed Application under Section 125 of the Code of Criminal Procedure bearing Petition No.E.67/2017 before the learned Family Court, Latur for grant of maintenance. Vide its order dated 10/04/2018, the learned Family Court granted maintenance of Rs.35,000/- p.m. to the Petitioner from

(4)

the date of Application. Aggrieved by the said order, husband of the Petitioner (deceased Anil) filed Criminal Revision Application No.145/2018 before this Court, which was dismissed on 08/10/2021.

7. Since the maintenance was not being regularly paid by the deceased Anil, the Petitioner subsequently filed Petition bearing E.R. No.26/2018 under Section 128 of Code of Criminal Procedure for recovery of maintenance of Rs.14,00,000/- for the period from 24/02/2015 to 23/06/2018. Subsequently, the Petitioner had added arrears of maintenance till December 2021 vide application below Exhibit 41 and 49. Thereafter, she filed another Petition bearing E.R. No.61/2022 for recovery of maintenance amount of Rs.4,20,000/- for the period from January 2022 to December 2022.

8. Another application below Exhibit 31 also came to be filed for recovery of amount of Rs.2,10,000/- for the period from January 2024 to June 2024. The Petitioner has precisely submitted that, till the demise of her husband Anil, in both Petitions amount of Rs.35,00,000/- was due, out of which, deceased Anil had deposited Rs.22,55,000/- against said recovery. Thus, the amount of Rs.6,65,000/- was due in E.R. No.26/2018 and amount of Rs.5,80,000/- was due in Petition No.E.R. No.61/2022 i.e. total

amount of Rs.12,45,000/- was due and outstanding against deceased Anil.

9. The Petitioner further stated that, on 27/06/2023, her husband Anil Waghmare expired. She came to know that there are five life insurance policies which her husband deceased Anil had obtained from Life Insurance Corporation of India, wherein the Respondent herein (mother of deceased Anil) was nominee. Therefore, the Petitioner prayed for recovery of the amount of due maintenance of Rs. 6,30,000/- from the assured amount of life insurance policies in Petition bearing E.R. No.61/2022. The Petitioner also prayed for restraining the Branch Manager of the Life Insurance Corporation from disbursing the remaining assured amount to anybody, till deciding the rights of legal heirs of deceased Anil. Vide the order dated 20/07/2023, the Family Court, Latur restrained the Branch Managers of the respective Life Insurance Corporation Branches from disbursing the amount in favour of the nominee of deceased Anil. Therefore, the Respondent (mother of deceased Anil) preferred Petition bearing Criminal Writ Petition No.1809/2023 against the order of the Family Court, dated 20/07/2024. However, on 19/06/2024, this Court decided the Writ Petition by directing the Family Court, Latur to decide pending application of Respondent herein. The Family Court,

(6)

Latur, on 21/08/2024, allowed both the Petitions i.e. E.R. No.26/2018 and E.R. No.61/2022 for recovery of maintenance amount and directed the Branch Managers of respective Life Insurance Corporation Branches to disburse the amount according to the law, except amount of Rs.12,45,000/-, which was ordered to be transmitted in the name of Registrar of the Family Court. Therefore, the Petitioner has approached this Court with the aforesaid prayer clauses.

10. Learned Advocate Mr Shinde appearing for the Petitioner submits that the impugned order dated 21/08/2024 to the extent of Clause 3 and 4 is illegal and in view of Section 39 of the Insurance Act, 1938, it be held that the nominee can act like agent to receive money due under a life insurance policy, but he/she can not utilize the same as the amount payable under policy becomes part of estate of the assured. He would further submit that there is no testamentary succession as deceased Anil has not executed any Will Deed until date in favour of the Respondent (mother). Therefore, the amount towards life insurance policy will have to be paid as per the succession certificate, which would be issued by the competent Civil Court, after deciding the rights of the parties. Learned Advocate for the Petitioner further submits that the amount of interest under policy claimed by the

(7)

heirs of assured is in accordance with law of succession governing the parties. Therefore, the Family Court ought to have given direction to the concerned Branch Managers of the Life Insurance Corporation to deposit entire amount before the Family Court. Therefore, he prayed for grant of aforesaid prayers as per the prayer clauses.

11. Mr Shinde, learned Advocate for the Petitioner also tried to justify his aforesaid reliefs on the basis of the judgments reported in **Smt. Sarbati Devi and another Vs. Smt. Usha Devi, AIR 1984 SC 346; Vishin N. Khanchandani and another Vs. Vidya Lachmandas Khanchandani and another, 2000 AIR SCW 2932 and Challamma Vs. Tilaga and others, 2010 AIR SCW 121.**

12. Per contra, Mr Gundre, learned Advocate for the Respondent strongly opposes the petition. He submits that the proceedings as regards succession certificate, as well as for legal heirs certificate is pending before the Civil Court and till its decision, the amount as claimed by the Petitioner may not be directed to be disbursed. He also submits that, prior to decision of the aforesaid as regards grant of succession certificate claimed by the Petitioner, this matter be kept pending.

13. Through video conferencing, Mr Kedar, learned Advocate, who has filed an application for intervention on behalf of Smt. Diksha Anil Waghmare, who is claiming to be the second wife of the deceased Anil, also appeared. He also reiterated the same submissions as made by the learned Advocate Mr Gundre for Respondent.

14. After considering the submissions made by the learned Advocates for the parties and the documents on record, it is pertinent to note here that the Petitioner had filed Petition No.E.R.61/2022 for recovery of maintenance amount of Rs.4,20,000/- for the period from January 2022 to December 2022. Though there were five policies in the name of her husband, the Petitioner came to know that her husband Anil has nominated his mother as a nominee to receive the benefits of said five policies. Therefore, the Petitioner filed an application below Exhibit 13 in Petition No.E.R. No.61/2022 for recovery of amount of Rs.6,30,000/- from the assured amount of policies and also for restraining Branch Managers of the respective Life Insurance Company branches for disbursing the amount to anybody, till the rights of legal heirs of Anil are decided.

15. Learned Family Court, Latur, vide its order dated 20/07/2023 pleased to direct Branch Manager of the Life Insurance Corporation, Branch Jeevanshri Building, having Branch Code No.951, not to disburse the insured/claim amount of policies bearing No.999530403 and 999522829 to the nominee of deceased Anil. Likewise, the Family Court was also pleased to direct Branch Manager of Life Insurance Company having Branch Code No.934 for not to disburse the insured/claim amount of policies bearing Nos.925311233, 925311234 and 924311235 to the nominee of the deceased Anil, till further orders.

16. It is case of the Petitioner that, thereafter, she also filed an application for succession certificate before the learned Civil Judge Senior Division, Latur, in which, she has promptly disclosed that the Respondent Sau. Sindhu Machindra Waghmare (mother of Deceased Anil) is also other legal heir apart from her. In another proceedings for legal heirs certificate, she again disclosed the said Court that alongwith her, respondent Sau. Sindhu Machindra Waghmare is the legal heir and apparently prayed for grant of legal heir certificate. The said proceedings are pending before the Civil Court and as such, the amount of policy and other property of deceased Anil shall be disbursed to the legal heirs and successors as per the decision to be

taken by it. The Life Insurance Corporation shall also be disbursing the amount of the policies of the Deceased Anil as per the decision of the Civil Court competent to issue Succession Certificate. However, as already directed by the learned Family Court to deposit the arrears of Maintenance of Rs.12,45,000/- (Rupees Twelve Lakh Forty Five Thousand only) from assured claim amount of Insurance Policy No. 999530403 of deceased Anil Machindra Waghmare in the name of Registrar, Family Court, Latur, the said amount can be permitted to be withdrawn by the Petitioner.

17. Though the learned Advocate for the Respondents are strongly objecting for withdrawal of the aforesaid amount in favour of the Petitioner, however, there is no strong reason to object for withdrawal of the said amount, as it is admittedly belonging to the Petitioner. The Petitioner, who is doing household work is unable to maintain herself as such is waiting since long to receive her entitlement. Despite order passed by the Court, she is unable to receive amount which is outstanding and due to her. The Respondent herein and newly added Respondent are not justified in creating hurdle in receiving the amount legally due to the Petitioner. Hence, Petitioner be paid an amount of Rs.12,45,000/- (Rupees Twelve Lakh Forty Five

Thousand only) deposited with the Registrar, Family Court, Latur as per the order of Family Court.

18. As regards the remaining amount of the policies, it is expected from Life Insurance Corporation branch offices and perhaps must be following the practice of directing the legal heirs of deceased policy holder to obtain succession certificate from the competent Civil Court before disbursing the policy amount of deceased policy holder. As noted earlier, the parties have already approached the Competent Civil Court for getting the succession certificate, and therefore, after receiving such succession certificate, the Life Insurance Corporation shall be deciding the shares of the claimants. Thus, the Life Insurance Corporation to disburse the remaining amount as per the succession certificate to be issued by the competent Civil Court.

19. Thus, the present petition stands allowed in view of the aforesaid observations.

20. No order as to costs.

CRIMINAL WRIT PETITION NO.2078/2024

21. For the reasons stated above, the challenge sought by the Petitioner in this petition does not survive and accordingly, it is held

(12)

that the Petitioner in this petition alone cannot be permitted to withdraw the entire amount of life insurance policies in the capacity of nominee of the policies belonging to deceased Anil Machindra Waghmare. As stated earlier, remaining policy amount is to be disbursed as per the orders passed by the Civil Court in succession certificate proceedings. Hence, the instant criminal writ petition stands dismissed.

22. No order as to costs.

[SUSHIL M. GHODESWAR, J.]

sjk