



- 1 -

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1791 OF 2018
(Ashwini w/o Dadasaheb Khindkar and others Vs. The State of
Maharashtra and others)

Mr.D.A.Mane h/f Mr.N.G.Talekar and Mr.PA.Bharat, Advocates for the
petitioners.

Mrs.A.S.Mantri, APP for the respondent/State.

Mr.S.G.Kawade, Advocate for respondent No.2.

(CORAM : SUSHIL M. GHODESWAR, J.)

RESERVED ON : 08.12.2025

PRONOUNCED ON : 19.12.2025

PER COURT :

1. The petitioners are challenging the order dated 11.12.2018 wherein Criminal Revision Application No.88/2018 preferred by the petitioners came to be dismissed by the learned Additional Sessions Judge, Beed. In the said revision petition, the petitioners have challenged the order dated 09.10.2018 passed by the learned J.M.F.C. Beed in Criminal M.A.No.732/2018 thereby directing the concerned police station to conduct the investigation in respect of the complaint filed respondent No.2. According to the petitioners, the respondent No.2 has filed the complaint challenging the inclusion of certain voters

in the voters' list pertaining to the Gram Panchayat. According to respondent No.2, the said voters have manipulated the voters' list and therefore they have committed fraud by getting their name included in the voters' list through illegal manner. The learned J.M.F.C., vide its order dated 09.10.2018, pleased to observe that the complaint discloses commission of cognizable offences and therefore by exercising powers u/s 156(3) of the Cr.P.C., it is directed to the Assistant Police Inspector Pimpalner Police Station to conduct the investigation in respect of the complaint filed and shall file his report as early as possible, preferably within 2 months. The said order was assailed by the petitioners before the learned Sessions Judge in revision u/s 397 of the Cr.P.C.. The learned Additional Sessions Judge has observed in the impugned order that when any person gives information about cognizable offence orally, it shall be reduced in writing and there is no mandatory provision that only written complaint should be given. The learned Additional Sessions Judge further observed that to invoke jurisdiction u/s 156(3) of the Cr.P.C., it is sufficient for the Judicial Magistrate, F.C. to see that the complainant had been to Police Station for lodging the complaint and Police has not taken cognizance of the said information. The learned Additional Sessions Judge, in its order, further observed that

the learned Judicial Magistrate, F.C. has passed legal, proper and correct order and the said order needs to be maintained. Prior to that, the learned Additional Sessions Judge, vide passing order below Exh.4 dated 14.11.2018, was pleased to stay the execution and operation of the impugned order passed by the learned Judicial Magistrate, F.C. in MCA No.732/2018 dated 09.10.2018 till appearance of respondent Nos. 1 and 2. The said interim protection was continued by this Court vide order dated 21.12.2018.

2. Heard the learned Advocates for the petitioners, respondent No.2 and the learned APP for the respondent/State.

3. According to the learned Advocate for the petitioners, in all 51 persons came to be added as per the complaint of respondent No.2 in the voters' list for the election to be conducted in the year 2018. Respondent No.2 has alleged that the accused persons have manipulated the voters' list and though they are not residing from Village Belwadi, still they have been shown as the voters of Belwadi village. He has further submitted that the petitioners have nothing to do with the finalization of the voters' list. As per the provisions of

Section 12 and 13 of the Maharashtra Village Panchayat Act, the list of voters' is being prepared as per Rule 3 of the Maharashtra Village Panchayat Rules, 1959. The candidates are having an opportunity to peruse the final voters list. If the said candidate is having any grievance in respect of finalization of voters' list, he can raise such grievance before the competent authority. However, respondent No.2 in this case has not raised his grievance in respect of alleged malpractice. On the contrary, it was the petitioners, who have submitted the grievance before the Authority before commencement of the elections stating therein that respondent No.2 himself has illegally incorporated name of 22 persons in the voters' list. He has further submitted that the complaint filed by respondent No.2 is nothing but out of political rivalry and same is baseless and does not disclose any commission of cognizable offence. He has further submitted that there is no ground for the learned J.M.F.C. to entertain such complaint, which has been filed out of political rivalry and before scrutiny in abrupt manner, the learned J.M.F.C. has directed the Police Officer to conduct the investigation as per Section 156(3) of the Cr.P.C. He has further submitted that as per the provisions of Representation of Peoples Act, if the Authority has found any illegalities during the process of election,

they have power to initiate criminal prosecution. Therefore, the Election Commission is the competent authority, which can initiate criminal prosecution if they found malpractices in the process of election. Thus, the complainant/respondent No.2 is having no locus to lodge such prosecution against the petitioners. At the most, respondent No.2 / complainant was required to approach the competent authority i.e. the Collector or the Election Commission or the Returning Officer to lodge the grievances in respect of modifying or making correction in the final voters' list. The respondent No.2 is also not having any record to suggest that the proposed accused persons or the petitioners have submitted false record and data and thereby fraudulently inserted their names in the voters' list, and therefore it is submitted that the impugned order passed by the learned Additional Sessions Court is illegal and requires interference.

4. Per contra, the learned Advocate for respondent No.2 opposed the complaint itself and submits that the orders passed by the Sub Ordinate Courts are correct and proper and requires no interference. He has submitted that during the investigation, it will reveal to the Authorities that the petitioners have committed the

aforesaid offences and therefore the order passed by the learned J.M.F.C directing the Police Officer to carry out the investigation is correct and proper and he is accordingly praying for dismissal of the writ petition.

5. Admittedly, the voter's list in question is of the year 2018. The election of the said Gram Panchayat are over. The voters' list, which was sought to be questioned, is still in existence. The same is also being used for the purpose not only for the Gram Panchayat elections but also for the State Legislation Elections. The voters' list for both the Gram Panchayat and State Legislation Election is the same and neither the Collector nor the Election Commission have questioned or corrected the said voters' list nor subsequently respondent No.2 / Complainant even approached after so many years to the Collector or Election Commission for carrying out the modification in the said voters' list. The preparation of the final voters' list is in the hands of Election Commission and as such by no stretch of imagination, it can be ascertained that the petitioners themselves have manipulated the said voters' list. Even otherwise, the said voters' list was put to verification before finalization. During that period, respondent No.2 neither raised any objection nor approached to the Competent Authority for it's

modification.

6. The Division Bench of this Court in **WP NO.2395/2013, Mahadeo S/o Bhimrao Kendre Vs. The State Election Commission and others, on 23.03.2016**, while considering the petition seeking quashing and setting aside of election of the Gram Panchayat, pleased to observe in paragraph Nos. 11 and 12 as under :-

“11. Perusal of the scheme of preparation of voters list for the election of a Grampanchayat it is manifest that Sections 12 and 13 of the Bombay Village Panchayats Act, 1958 and Rule 3 of the Bombay Village Panchayats Election Rules 1959 are to be considered. Section 12 of the Bombay Village Panchayats Act, 1958 lays down that the electoral roll of Bombay Legislative Assembly prepared under the Representation of Peoples Act, 1950 and in force on such date as the State Election Commissioner may by order notify in this behalf for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters for such ward or village. The persons whose names appeared in the voters list of the Maharashtra Legislative Assembly are required to be maintained. The Panchayat Act and the Rules do not provide for machinery to consider the objection about non – attainment the age of majority. If the name of such a person appears in the Maharashtra Legislative Assembly Voters list then his name is to be included in the voters list of the Panchayat elections. The correction will first have to be carried out in this regard in the Maharashtra

Legislative Assembly Voters list. In the present case, no such application was made to carry out the necessary amendment in the voters list of Maharashtra Legislative Assembly. The same is to be adopted for elections of the panchayat. The same would apply in case of the voters who according to the petitioner were no more.

12. One of the major grievance of the petitioner is that the voters list of Bhojnakwadi contain the names of the persons whose names also appear in the voters list of another Grampanchayat. Section 12 of the Bombay Village Panchayats Act, 1958 as observed above requires that the officer designated by the State Election Commissioner shall maintain the list of voters for each such ward or village. It has to notify the voters list for such part of the constituency of the Assembly as is included in a ward or a village shall be the list of voters for such ward or village.”

Therefore, it is crystal clear that objection as regards voters' list is to be preferred before the Authority, which is referred under the provisions of the Act. Even otherwise as stated hereinabove, the elections of the year 2018 are already over. The voters' list for the purpose of State Legislation Assembly and Gram Panchayat Election is one and the same and has not been questioned by the respondents any time either before instituting complaint before the learned J.M.F.C. or before the requisite authorities.

7. In that view of the matter, the orders passed by both the Sub-ordinate Courts would not survive and cannot be accepted. Hence, both the orders passed by the learned Sub-ordinate Courts are quashed and set aside.

8. Considering the above, the instant petition stands allowed and disposed of accordingly.

(SUSHIL M. GHODESWAR, J.)