



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3456 OF 2024

SHRI SUDHAKAR MADHAV GAURKAR AND OTHERS

Vrs.

SOU. KANTA ISHWAR NANDE AND ANOTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S. N. Singh, Advocate for petitioners.
Shri Raju Kadu, Advocate for respondent No.1.

CORAM: R. M. JOSHI, J.

DATE : 10/06/2025.

1. At the outset, learned counsel for the respondent No.1 raises objection to the maintainability of the petition on two counts i.e. firstly, the civil writ petition is not maintainable since the order impugned is passed by the learned Judicial Magistrate First Class, Warora. Learned counsel raised contention that since the order impugned is challenged before the Sessions Judge in the Criminal Revision bearing No.33/2022 and the said revision is dismissed by the learned Sessions Court, Warora, now, it is not open to the petitioner to take exception to the order passed by the learned Judicial Magistrate First Class, Warora.

2. This contention is resisted by the learned counsel for the petitioner on the ground that in view of the Judgment of the Coordinate Bench of this Court in the case of Nisar Fatema d/o Amiruddin Ansari Vrs. State of Maharashtra and others, reported in 2018 DGLS (Bom.) 462, the provisions of Code of Criminal Procedure have no application to the proceedings under the Registration of Births and Deaths Act, 1969 (For short, "Said Act").

3. As against this, learned counsel for the petitioner has relied upon the Judgment of Coordinate Bench of this Court in the case of Santosh Vitthal Awate Vrs. Nagesh Navnath Awate and another, reported in 2019 SCC OnLine Bom 3107 in order to canvass that the revision would not be maintainable as it is open for the petitioner to take recourse to Section 13 (3) of the said Act.

4. At the outset, this Court wishes to clarify that at this stage, the Court is deciding as to whether the civil writ petition is maintainable or not and consequent to the filing of the Criminal Revision No.33/2022 on the maintainability of the petition. Merit of petition is not considered for now.

5. This Court in the case of Nisar Fatema d/o Amiruddin Ansari Vrs. State of Maharashtra and others in Para No.9 has held as under :-

“9. No specific procedure has been laid down in the Act for deciding the application under Section 13(3) of the Act. From the nature of the proceeding before the Magistrate under Section 13(3) of the Act, it cannot be termed as an "inquiry" within the meaning of Section 2(g) or "judicial proceeding" within the meaning of Section 2(i) of the Code. The Magistrate is not empowered to either punish or inflict penalty in such proceeding. The said proceeding is not governed under any of the procedures prescribed for summary/summons or warrant trials. The Magistrate deals with the application under Section 13(3) as "Persona Designata" and not in the capacity of Presiding Officer of a Criminal Court under Section 11 of the Code. The nature of the proceeding ex-facie is of civil nature. In the circumstances, the provisions of the Code would not be applicable to the proceedings before the Magistrate”.

6. The Co-ordinate Bench of this Court in the case of Santosh Vitthal Awate (cited supra) has not taken any contrary view than the one taken in the case of Nisar Fatema d/o Amiruddin Ansari (cited supra). This Court also does not find it necessary to take any view contrary to the view taken in these two Judgments.

7. Suffice it to say that the provisions of Code of Criminal Procedure have no application to the proceedings under the Registration of Births and Deaths Act, 1969.

8. As far as the filing of Criminal Revision and dismissal thereof is concerned, the Sessions Court has held that the Criminal Revision is not maintainable. Thus, there is no embargo for the petitioner to take exception to the order passed by the learned Judicial Magistrate First Class, Warora dated 14/02/2018 in Misc. Criminal Application No.73/2017.

9. It is, therefore, held that writ petition is maintainable.

10. The learned counsel for the respondents seeks time to make submissions on merits of the petition.

11. As per the convenience of both sides, petition be heard finally at the stage of admission on 16/06/2025.

[R. M. JOSHI, J.]