

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

CRIMINAL REVISION NO. 109 OF 2007

Mujahide Millat Taj Education Society,
Teachers' Colony, Tajabad (West),
Nagpur - 24, through its President -
Shri Sharaful Haque Mohammad
Suleman, aged about 62 years,
Occupation : Service, Resident of
182, Teachers' Colony, Tajbad (West),
Nagpur - 24.

.... **APPLICANT.**

// VERSUS //

1. State of Maharashtra, through P.S.O.
Sakkardara, Nagpur.
2. Iqbal Ahmed Sheikh Suleman,
aged about 43 years, Occupation :
Service, Resident of 22-A,
Nirala Society, Tajabad, Nagpur.

.... **RESPONDENTS.**

Mr.Sachin Pujari h/f. Anil S. Mardikar, Sr.Advocate for Revision-Petitioner.
Ms Sangeeta Jachak, A.P.P. for Respondent/ State.
Mr. H.G.Katekar h/f. Mr. A.M. Rizwy, for Respondent No.2.

CORAM : A.R.JOSHI, J.
DATED : FEBRUARY 04, 2015.

ORAL JUDGMENT :

1. Heard rival arguments for some time on this criminal revision petition filed by original *de facto* complainant-society. The issue involved in the matter is very small inasmuch as the original complainant-society which has filed first information report, had challenged order dated 5th February, 2007 passed by Additional Sessions Judge, Nagpur in Revision Petition No. 27 of 2007.

In order to ascertain the scope of the present revision certain factual position is required to be mentioned as under :

2. Initially, on the complaint lodged by the present revision petitioner Sakkardara Police took action and initiated proceedings against present respondent No.2. The said respondent No.2 was made as an accused in Criminal Case No. 86 of 1999 for the offence punishable under Section 420 of the Indian Penal Code. During pendency of the said criminal case present respondent No.1/ State preferred application for allowing the prosecution to file certain documents in order to establish the charge against the then accused/ present respondent No.2. The said application was allowed by Judicial Magistrate First Class, Nagpur vide order dated 11th December, 2006 and necessary permission for production of the documents was granted to the prosecution.

3. Being aggrieved by the said order then accused-present respondent No.2 preferred Criminal Revision No. 27 of 2007 before Additional Sessions Judge, Nagpur. The order passed in the said revision is impugned in the present matter. For the sake of ready reference operative part of the said order is reproduced hereunder so as to have proper perspective of the directions given by the Sessions Court :

“The revision is allowed.

2] The impugned Order dated 11.12.06 passed by the Trial Court below Exh.16 in Reg. Cri. Case No.86/99 is hereby set aside. However, this order will not affect the liberty and right of the prosecution to produce the additional evidence oral or documentary if any requires under Section 173(8) of the Cri. P.C. through the investigating agency or P.S.O. of the concerned Police Station if it is essentially requires for final adjudication of case.”

4. The import of the above order is that though revision preferred by the then accused was allowed, there was liberty granted to the prosecution to take recourse to the provisions of Section 173(8) of the Code of Criminal Procedure. In fact, this right is always available to the prosecution in proper cases and the same has been reiterated by the revisional Court. Plain reading of the said order gives effect that though the revision is allowed the prayer of the prosecution has not been totally negated and always avenue was kept open to have additional investigation and file supplementary chargesheet along with additional documents.

Though this was the effect of the said order, which is impugned, surprisingly, the original *de facto* complainant has challenged that order before this Court by the present revision and while admitting the revision this Court had stayed the entire proceedings before the trial Court. The effect of the above is that since 2007 the matter is pending before the trial Court only for the reason of filing of the present revision petition. But for this revision petition the matter could have been proceeded before the trial Court after the State adopts the avenue open to it by way of further investigation and also spelt out in the impugned order.

5. In view of above, even in the opinion of this Court, there is no substance in the present revision petition and, in fact, there is nothing to interfere with the said order of the revisional Court. On the contrary, it would be appropriate for the State Government to collect more documents which the State Government had sought to file during the trial by way of conducting additional investigation and filing supplementary chargesheet. Needless to state that the State Government can take such appropriate steps as expeditiously as possible considering the delay in the matter and staying all the proceedings for last more than seven years. Under these circumstances, the present revision petition preferred by the applicant/ original *de facto* complainant is **dismissed** and accordingly disposed of.

The stay already granted to the trial court proceedings is vacated.

The trial Court to deal with the matter properly in accordance with law.

JUDGE

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