

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

CRIMINAL APPLICATION NO.3027 OF 2017

1. Shankar S/o Hanmantrao Patil,
Age 60 years, Occu: Agri.,
R/o Kotgyal, Tq. Biloli,
District Nanded.
2. Irabai W/o Shankarrao Patil,
Age 55 years, Occu. Household,
R/o Kotgyal, Tq. Biloli,
District Nanded.
3. Ramchandra S/o Ishwarrao Patil,
Age 65 years, Occu. Agri.,
R/o Kotgyal, Tq. Biloli,
District Nanded.
4. Venkat Shivlingrao Deshmukh,
Age 48 years, Occu. Agri.,
R/o Kotgyal, Tq. Biloli,
District Nanded.
5. Shankar Moglappa Aurale,
Age 45 years, Occu. Agri.,
R/o Laghul, Tq. Biloli,
District Nanded.

... **Applicants**

Versus

1. The State of Maharashtra
Through Police Station,
Naigaon (Bz.), Tq. Naigaon,
District Nanded.

2. Chandrabai W/o Madhavrao Kanthe,
Age 65 years, Occu : Household,
R/o Kotgyal, Tq. Biloli,
District Nanded. ... **Respondents**

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Mr. U.B.Bilolikar, Advocate for Applicants
Mrs. P.V.Diggikar, APP for Respondent No.1 – State
Mr. B.R.Kedar, Advocate for Respondent No.2

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**CORAM : S.S.SHINDE AND
MANGESH S. PATIL, JJ.**

**RESERVED ON : 03rd November, 2017
PRONOUNCED ON : 15th November, 2017**

JUDGMENT : (Per Mangesh S. Patil, J.) :-

Rule. The Rule is made returnable forthwith.
With the consent of both the sides the matter is heard
finally.

2. In this application under Section 482 of the
Criminal Procedure Code (hereinafter referred to as 'the
Cr.P.C.') the applicants are praying for quashing the FIR
bearing Crime No.80 of 2017 registered with Police
Station Naigaon, District Nanded for the offences
punishable under Sections 107, 120-B, 143, 147, 148,

149, 201, 302, 420, 468, 471 of the Indian Penal Code. As also the judgment and order dated 02.05.2017 passed by the learned Additional Sessions Judge, Biloli in Criminal Revision No.3 of 2016, on the basis of which order, the FIR has been registered.

3. Shortly stated the facts as are necessary for decision of this application may be summarized as under :

Respondent No.2, who is the original complainant filed a complaint registered as Miscellaneous Criminal Application No.107 of 2014 before the learned Judicial Magistrate First Class, Naigaon inter alia alleging that all the applicants herein hatched a conspiracy and caused forged Will and other documents to be executed by deceased Irabai Sagappa Warle, who was her step mother. The learned Magistrate directed an inquiry to be made apparently under Section 203 of the Cr.P.C. by the order dated 03.01.2015, when Respondent No.2 was hoping that the Magistrate would direct an investigation

as contemplated under Section 156(3) of Cr.P.C.

4. Being aggrieved by such order Respondent No.2 preferred a Criminal Revision Petition No.03 of 2016 before the learned Additional Sessions Judge, Biloli by arraying the present applicants as the respondents. The learned Additional Sessions Judge by order dated 02.05.2017, without issuing any notice to the present applicants, by the judgment and order dated 02.05.2017 allowed the Revision Petition and directed investigation to be carried out by Sub Divisional Police Officer, Biloli under Section 156(3) of Cr.P.C. In obedience to such order the impugned FIR has been registered on 10.06.2017.

5. We have heard the learned advocate for the applicants, the learned APP and the learned Advocate for Respondent No.2. The learned Advocate for the applicants vehemently submitted that the impugned order passed by the learned Additional Sessions Judge in the Criminal Revision suffers from the vice of not

following the mandate of law as laid down under Section 397 read with Section 401 of Cr.P.C. by extending an opportunity of being heard to the present applicants who were arrayed in the revision as Respondent Nos.1 to 5 by issuing a suitable notice. Failure on his part to follow such procedure goes to the root of the jurisdiction exercised by the learned Additional Sessions judge. In support of his submission the learned Advocate referred to decision of the Supreme Court in the case of ***Manharibhai Muljibhai Kakadiya and Another Vs. Shaileshbhai Mohanbhai Patel and others [2012 (10) SCC 517]***.

6. The second limb of the argument of the learned Advocate for the applicants is that the order passed by the Magistrate in directing an inquiry to be made was merely an interlocutory order and no revision under Section 397 of the Cr.P.C. was maintainable. The learned Advocate in support of this submission referred to the couple of the decisions of the Division Benches of this Court in ***Shyamsunder Radheshyam Agrawal***

Vs. State of Maharashtra and another [2013 (2) Bom. C.R. (Cri.) 736] and Yogesh Vilas Dalavi and others Vs. State of Maharashtra and another [2015 (1) Bombay C.R. (Cri.) 750].

7. The learned Advocate for Respondent No.2 opposed the application and the submission of the learned Advocate for the applicants and sought to rely upon the recent judgment of the Supreme Court in the case of ***Girish Kumar Suneja Vs. C.B.I. [AIR 2017 SC 3620]*** decided on 13th July 2017. The learned Advocate also placed reliance in Division Bench judgment of this Court in ***Shri. Kiran Gokuldas Kalantry and others Vs. Dr. Priti Paul Singh Sethi and others [2008 ALL MR (Cri.) 2681]***.

8. We have carefully gone through all the above decisions cited on behalf of both the sides. We have also perused the record. The facts as are necessary for decision of this matter, mentioned herein above are not in dispute and one can straight way proceed to

appreciate the matter in controversy.

9. As can be gathered from the above mentioned facts and the decisions, the matter in controversy revolves around the basic question as to whether in the facts and circumstances of the case the applicants were entitled to be heard being the suspects, even before issuance of process under Section 204 of the Cr.P.C. when the learned Additional Sessions Judge was hearing and deciding the Criminal Revision.

10. In our view, the dispute is no more *res integra* in view of the decision of the larger bench of the Supreme Court in the case of *Manharibhai* (Supra). In addition, the successive Division Benches of this Court in the case of *Shyamsunder and Yogesh* (Supra) have further crystalized the issue. In the case of *Manharibhai*, the facts were a bit different as compared to the facts in the matter in hand. In that case, the Magistrate had dismissed the complaint under Section 203 of the Cr.P.C. and the revision preferred by the complainant in

the High Court under Section 401 of the Cr.P.C. the request of the suspect / proposed accused for arraying them as parties to the revision was rejected by the High Court. A similar argument as was advanced before us was considered by the Supreme Court. It also referred to various decisions rendered by the Supreme Court and the High Court inter alia in the case of **P. Sundarrajan and others Vs R. Vidhya Sekar [(2004) 13 SCC 472]**, **Raghu Raj Singh Rousha Vs. Shivam Sundaram Promoters Private Limited and another [(2009) 2 SCC 363]** and **A.N.Santhanam Vs. K. Elangovan [2011(2) JCC 720 (SC)]**. After examining the scheme of the Cr.P.C. contained in Chapter XVI following observations have been made in paragraph 54 :

“54. In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203 –

although it is at preliminary stage – nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get right of hearing before revisional court although such order was passed without their participation. The right given to accused or the other person under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.”

At the end, the Supreme Court has succinctly laid down the conclusion in paragraph 58 which reads as under :

“58. We are in complete agreement with the view expressed by this Court in P. Sundarrajan, Raghu Raj Singh Rousha and A. N. Santhanam. We hold, as it must be, that in a revision petition preferred by complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed crime is entitled to hearing by the revisional court. In other words, where complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the

revisional court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled.”

11. It is pertinent to note here that as is observed above the facts in the case before the Supreme Court in the matter of Manharibhai (Supra) and the one in the matter in hand are little different in as much as in the case before the Supreme court the complaint was dismissed under Section 203 of the Cr.P.C. against which the revision was preferred. Whereas in the matter in hand, the learned Magistrate merely directed an inquiry to be made by himself, purportedly deferring issuance of process when the Respondent No.2 was seeking direction for investigation by police under Section 156(3) of the Cr.P.C. However, even this aspect was considered by the Supreme Court in the case of Manharibhai while considering the decision of two Judge Bench of the Supreme Court in the case of Raghu Raj Singh Rousha (Supra) in which case the facts were

similar to the case in hand. The complainant was seeking a direction under Section 156(3) of the Cr.P.C. but the Metropolitan Magistrate refused the request and the complainant being aggrieved had preferred a revision before the High Court. After noting all these facts following observations were made in the case of Manharibhai in paragraph No.56.

“56. In Raghu Raj Singh Rousha, a two-Judge Bench of this Court was faced with a question whether, in the facts and circumstances of the case, the High Court in exercise of its jurisdiction under Sections 397 and 401 of the Code was justified in passing an order in the absence of the accused persons. That was a case where a complaint was filed under Section 200 of the Code in respect of offences punishable under Sections 323, 382, 420, 465, 468, 471, 120-B, 506 and 34 of IPC. Along with the complaint, an application under Section 156(3) was also made. The Metropolitan Magistrate passed an order refusing to direct investigation under Section 156(3) and the complainant was asked to lead pre-summoning evidence. The complainant aggrieved by the order of the Metropolitan Magistrate filed a revision petition before the High Court. The High Court with the consent of the APP appearing for the State set aside the order of the Metropolitan Magistrate with a direction to him to examine the matter afresh after calling for a report from the police authorities. It is from this order that the matter reached this Court at the instance of the suspect/accused. The Court observed that if the Metropolitan Magistrate had taken cognizance of the offence and issuance of summons upon the accused persons had been merely postponed, in a criminal revision filed on behalf of complainant, the accused was entitled to be heard before the High Court. Sections 397, 399 and 401 were noticed by this Court and so also few earlier decisions including Chandra Deo Singh, Vadilal Panchal, P. Sundarrajan and then in paragraphs 22 and 23 (Pg. 369) of the Report, the Court held as under :

22. Here, however, the learned Magistrate had taken cognizance. He had applied his mind. He refused to

exercise his jurisdiction under Section 156(3) of the Code. He arrived at a conclusion that the dispute is a private dispute in relation to an immovable property and, thus, police investigation is not necessary. It was only with that intent in view, he directed examination of the complainant and his witnesses so as to initiate and complete the procedure laid down under Chapter XV of the Code.

23. We, therefore, are of the opinion that the impugned judgment cannot be sustained and is set aside accordingly. The High Court shall implead the appellant as a party in the criminal revision application, hear the matter afresh and pass an appropriate order.”

12. It is thus apparent that the dispute is no more res integra. In view of sub Section (2) of Section 401 read with Section 399 of Cr.P.C. even when revision is preferred against the order of a Magistrate refusing to direct investigation under Section 156(3) of the Cr.P.C., the proposed accused / suspects are entitled to be heard in the revision preferred by the complainant and in the absence of such opportunity the decision in the revision adversely affecting them will not be sustainable in law.

13. Suffice for the purpose to observe that the Division Bench of this Court in the case of Shyamsunder (supra) has also relied upon the decision in the case of Raghu

Raj Singh Rousha as well as Manharibhai (supra) and in the similar set of facts has quashed and set aside the similar orders passed in Criminal Revision filed before the Additional Sessions Judge.

14. Again, another Division of this Court to which one of us (S.S.Shinde, J.) was a party, in the case of Yogesh Vilas Dalavi (supra) has reached a similar conclusion albeit the decision in the case of Raghu Raj Singh Rousha and Manharibhai (supra) were not placed before the Division Bench. However, even in this Judgment a similar conclusion was drawn and the order of the Sessions Court passed in the revision was quashed and set aside.

15. The decision of the Supreme Court in the case of Girish Kumar Suneja (supra) relied upon by the learned Advocate for Respondent No.2 has been rendered in absolutely different set of facts and altogether a different controversy obtaining therein which has ex facie no bearing on the issue being decided in this matter. We,

therefore, have no hesitation in observing that the reliance placed by the learned Advocate for Respondent No.2 in this decision is rather misplaced.

16. Coming to the decision of the Division Bench of this Court in the case of Shri. Kiran Gokuldas Kalantry (Supra), the issue involved was as to whether the proposed accused had any right to be heard by a Magistrate while passing order under Section 156(3) of the Cr.P.C. and it was laid down that the law on the point that the accused is not entitled to be heard before issuing the process was well settled. Apparently, the facts in the matter before hand are different in as much as we are dealing with the issue as to whether in view of specific wording of sections 397, 399, 401 of the Cr.P.C. suspects / proposed accused has any right to be heard when in revision some orders are being passed to their prejudice. It is in view of the peculiar provisions and wordings of these sections that it has been laid down in the case of Raghu Raj Singh Rousha (supra) and Manharibhai (supra) that the proposed accused /

suspects have been held entitled to be heard in revision against the order refusing direction under Section 156(3) of the Cr.P.C. Therefore, the decision in the case of Shri. Kiran Gokuldas Kalantry (supra) also does not come to the aid of Respondent No.2.

17. To conclude, we have no hesitation in holding that the impugned order passed by the learned Additional Sessions Judge, Biloli directing investigation under Section 156(3) of the Cr.P.C. as well as the FIR registered in pursuance of such direction are liable to be quashed and set aside. We, accordingly, quashed and set aside the order as well as the FIR. The case is remanded back to the learned Additional Sessions Judge, Biloli. The present applicants shall be added as party / respondents to the Criminal Revision No.3 of 2016. The learned Additional Sessions Judge, Biloli shall thereafter, decide the Criminal Revision afresh on its own merits after hearing the parties including the present applicants. It is clarified that we have not expressed any opinion on merits of the complaint.

18. The application is accordingly allowed. The rule is made absolute.

(MANGESH S. PATIL, J.)

(S.S.SHINDE, J.)

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