

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3705 OF 2018

Prakash C. Sheth	...	Petitioner
Versus		
The State of Maharashtra & Anr.	...	Respondent

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Mr.Rahul Kadam, Advocate for the Petitioner.

Mr.A.R.Kapadnis, the Additional Public Prosecutor for the Respondent No.1/State.

Adv.Murtaza Nazmi with Mr.Ashish Sharma and Adv.Tamsin Monis, Advocate for the Respondent No.2.

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CORAM : A.M.BADAR J.

DATED : 14th FEBRUARY 2020.

ORAL JUDGMENT :

1 Heard.

2 Rule. Rule is made returnable forthwith. Heard finally
by consent of the parties.

3 The Petitioner is the First Informant, who has set the criminal law in motion by lodging the report which has culminated into registration of the Crime No.95 of 2013 for the offences punishable under Sections 403, 406, 408 and 409 of the Indian Penal Code. On filing of the final report, Criminal Case bearing No.2350/PW/2015 came to be registered against the respondent No.2 herein/original accused.

4 In the intervening period, the respondent No.2 herein/original accused filed Writ Petition bearing No.3045 of 2013 for quashing the FIR and the said petition came to be disposed of on 28/01/2014 after hearing the petitioner/First Informant.

5 After filing of the charge-sheet, the respondent No.2 herein/original accused preferred an application for discharge and it came to be rejected on 03/06/2017 by the Metropolitan Magistrate, 18th Court, Girgaon, Mumbai. It is reported that reply to the said application bears signature of the petitioner herein/First Informant. It is averred that on rejection of his claim for

discharge, the respondent No.2/original accused preferred Revision Petition bearing No.809 of 2017 before the learned Sessions Judge, Mumbai and the present petitioner/First Informant moved an application at Exhibit 2 in the said Revision Petition for intervention. He prayed to implead him as party respondent in the Revision Petition filed by the respondent No.2 herein/original accused.

6 After hearing the parties, by the impugned Order dated 27/07/2018, the learned Additional Sessions Judge, Greater Mumbai was pleased to allow the application at Exhibit 2 partly. The operative portion of the impugned Order reads thus :

- “1. Application (Exh.2) is partly allowed.
2. Intervenor/original complainant is allowed to intervene in the present Revision Application and to assist the Ld. APP on behalf of State.
3. At the final hearing, this Court will decide whether independent hearing is necessary to be given to the Intervener or he may be allowed to submit his written submission to this Court.
4. The prayer of the intervener/applicant to add him as

party respondent in the present Revision Application
is not legal and proper, hence it is rejected.

5. Application (Exh.2) stands disposed of.”

It is thus seen that the petitioner herein/First Informant is only permitted to assist the learned Assistant Public Prosecutor in conducting the Revision Petition and discretion to grant hearing to the First Informant at the time of the final hearing of the Revision Petition was reserved for being exercised at the time of the final hearing.

7 Heard the learned Counsel for the petitioner/First Informant. By drawing my attention to Sub-Section (2) of Section 401 of the Code of Criminal Procedure, the learned Counsel argued that the First Informant is the person, who is prejudicially affected by the ultimate Order passed on the discharge application and, as such, he has right of audience in the Revision Petition wherein discharge is claimed by the respondent No.2/original accused. The learned Counsel for the petitioner relied on the Judgment of the Honourable Apex Court in the matter of *J.K.International Versus State (Govt. of NCT of Delhi) & Ors.*¹ and

1 (2001) 3 Supreme Court Cases 462.

contended that the First Informant cannot be kept away from such crucial proceedings in which there can be discharge of the accused terminating the proceedings. It is urged that the issue is concluded by this Court (Nagpur Bench) in the matter of ***Kalyani w/o. Subhash Buty Versus The State of Maharashtra***², wherein this Court has held that the person, who can be adversely affected by the revisional Order needs to be heard. The learned Counsel further argued that in the Judgment of the Honourable Apex Court in the matter of ***Sundeep Kumar Bafna Versus State of Maharashtra & Anr***³, it is further held by the Honourable Apex Court that the First Informant needs to be heard at a crucial and critical juncture of the trial so that his interests in the prosecution are not affected adversely.

8 As against this, the learned Counsel appearing for the respondent No.2/original accused vehemently argued that the impugned Order is no way adverse to the interest of the petitioner. He is permitted to assist the Prosecutor and the learned Revisional Court can grant him hearing at the time of final hearing of the

2 2011 SCC Online Bom. 1528.

3 (2014) 16 Supreme Court Cases 623.

petition. Hence, the instant petition is pre-matured. The learned Counsel for the respondent No.2/original accused further argued that Sub-Section (2) of Section 401 of the Code of Criminal Procedure makes it clear that opportunity of hearing can be afforded by permitting the Pleader to work out the matter and in the instant case, the Prosecutor is the Pleader, who can safeguard the interest of the First Informant. Therefore, the impugned Order does not suffer from any legal infirmity. By relying on the Judgment of the Honourable Apex Court in the matter of *Manharibhai Muljibhai Kakadia & Anr. Versus Shaileshbhai Mohanbhai Patel & Ors.*⁴, it is argued that words “other person” implied in Sub-Section (2) of Section 401 of the Code of Criminal Procedure denotes only the co-accused or the suspect involved in the commission of the crime. These words do not bring into their ambit “the First Informant”.

9 I have considered the submissions so advanced and also perused the impugned Order passed by the learned Additional Sessions Judge, Mumbai.

4 (2012) 10 Supreme Court Cases 517.

10 In Paragraph 11 of the impugned Order, the learned Revisional Court came to the conclusion that the First Informant has right to participate in the Revision Petition, but his role is limited and he should assist the Assistant Public Prosecutor in defending the Revision Petition. It is further held that if his grievances are not properly placed before the Court, then the First Informant has right of audience. Proceeding on these premise, the prayer of the First Informant to make him a party respondent in the Revision Petition seeking grant of discharge application filed by the accused came to be rejected. Now, let us advert to the legal position in the matter and to decide whether the First Informant has a right of audience in the Revision Petition filed by the accused for seeking his discharge. Section 401 of the Code of Criminal Procedure deals with powers of this Court in dealing with the Revision Petition. Sub-Section (2) of the said Section makes it clear that the Revisional Order cannot be passed to prejudice the interest of the accused or other person unless such accused or such other person have an opportunity of being heard either personally or by his pleader in his own defence. Sub-Section (2) of Section

399 of the Code of Criminal Procedure makes it clear that same is the position of law while dealing with the Revision Petition by the Sessions Judge. Thus, even the Sessions Judge cannot pass any prejudicial Order affecting rights and interest of the accused or other person unless such accused or other person is granted an opportunity of hearing in the said Revision Petition. This opportunity is to be afforded by granting permission to such affected person to work out the matter either personally or by pleader in defence of his interest. In the matter of ***Manharibhai Muljibhai Kakadia (supra)***, the Honourable Apex Court has explained that the other person includes suspects or the persons alleged in the complaint to have been involved in an offence although they may not be termed as accused at a stage before issuance of process. This observation of the Honourable Apex Court cannot be construed to mean that the First Informant is excluded from the provisions of Sub-Section (2) of Section 401 of the Code of Criminal Procedure. The object behind enacting this provision is to grant an opportunity of hearing to the affected person and for adherence of the principle of natural justice. Hence, I find no merit in

contention of the learned Counsel for the Respondent No.2 herein/original accused that the term “the other person” used in Sub-Section (2) of Section 401 of the Code of Criminal Procedure does not include the First Informant. Once it is held that the term “the other person” used in Sub-Section (2) of Section 401 of the Code of Criminal Procedure includes the First Informant, then opportunity of hearing to such First Informant needs to be granted through the Pleader of his choice and not by the Prosecutor appointed by the State. Otherwise this provision is rendered otiose. This Court (Nagpur Bench), in the matter of ***Kalyani w/o. Subhash Buty (supra)***, had an occasion to deal with similar situation. In that matter, the learned Sessions Judge, Nagpur had allowed the application for discharge moved by the accused in exercise of revisional power. The First Informant challenged that Order before this Court and following are the observations of this Court (Nagpur Bench) in Paragraph 8 of the said Rulings :

“8. This Court in *Shriram Nagordhar & ors v. State of Maharashtra* and anr reported in 2006 Cri. L.J. 2216 observed taking note of the change in the Legislative intent of introducing the words "any other person" that opportunity of being heard ought to be granted to any

person who is likely to be prejudicially affected by order of revisional court as it is necessary for advancement of the cause of justice and is also in consonance with the principles of natural justice. Thus, it was concluded that it is necessary for the revisional court to hear such person before the order is passed to the prejudice of any such person looking into spirit of the provisions contained in Section 401 (2) Cr. P. C.”

11 What are the rights of the First Informant to set the criminal law in motion is an issue which has dealt with by the Honourable Apex Court in the matter of *J.K.International (supra)*.

Paragraph 8 of that Rulings reads thus :

“8. But the situation here is different, as the accused approached the High Court for quashing the criminal proceedings initiated by the appellant. It may not be that the complainant should have been made a party by the accused himself in the petition for quashing the criminal proceedings, as the accused has no such obligation when the case was charge-sheeted by the police. It is predominantly the concern of the State to continue the prosecution. But when the complainant wishes to be heard when the criminal proceedings are sought to be quashed, it would be a negation of justice to him if he is foreclosed from being heard even after he makes a request to the court in that behalf. What is the advantage of the court in telling him that he would not be heard at

all even at the risk of the criminal proceedings initiated by him being quashed. It is no solace to him to be told that if the criminal proceedings are quashed he may have the right to challenge it before the higher forums. ”

12 It is thus categorically held by the Honourable Apex Court that whenever the First Informant wishes to be heard when criminal proceedings are sought to be quashed, he needs to be granted an opportunity of hearing. In the instant case also, if the Revision Petition is allowed, then the criminal proceedings initiated by the petitioner herein/First Informant would be quashed by granting discharge to the accused therein. In this view of the matter, the petitioner herein/First Informant is certainly entitled for hearing in the Revision Petition claiming discharge by the accused. Even in the matter of ***Sundeeep Kumar Bafna (supra)***, it is held by the Honourable Apex Court that if the proceedings are likely to be quashed, then the complainant should be heard at that stage. It is further held in Paragraph 13 of the said Judgment of the Honourable Apex Court that the complainant or informant or an aggrieved party may however be heard at a crucial and critical juncture of the trial so that his interest in the prosecution are not

prejudiced or jeopardized. If this ratio is applied to the case in hand, then the petitioner being the First Informant is certainly entitled for hearing before the learned Sessions Judge, who is seized of the application for discharge moved by the respondent No.2 herein/original accused.

13 In the result, the impugned Order cannot be sustained. It suffers from legal infirmity and hence the Order :

ORDER

(i) The Rule is made absolute in terms of prayer Clause (A) and (B).

(ii) The Writ Petition is accordingly disposed of.

(A.M.BADAR, J.)

Raju D.
Gaikwad

Digitally signed
by Raju D.
Gaikwad
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