

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

**CRIMINAL APPLICATION (APL) NO. 71 OF 2016
AND
CRIMINAL APPLICATION (APL) NO. 74 OF 2016**

CRI.APPLN.NO.71/2016.

Dr. Tikeshwar Gautamrao Ghotekar,
Aged about 65 yrs., Occ. : Medical
Practitioner, R/o.C/o. M.PDhopte,
Plot No.8, New Urvela Colony,
Vivekanand Nagar Post Office,
Nagpur.

.... APPLICANT.

// VERSUS //

1. State of Maharashtra,
through P. S.O. Jaripatka,
P.S. Nagpur.
2. Sandeep Raghunath Thaware,
Aged about 45 yrs., Occ.Business,
R/o. Misal Layout, Nara Road,
Nagpur.

.... NON-APPLICANTS.

WITH

CRI.APPLN.NO.74/2016.

Amol Tikeshwar Ghotekar,
Aged about 35 yrs., Occ.: Private,
R/o.C/o. M.PDhopte, Plot No.8,
New Urvela Colony, Vivekanand
Nagar Post Office, Nagpur.

.... APPLICANT.

// VERSUS //

1. State of Maharashtra,
through P. S.O. Jaripatka,
P.S. Nagpur.
2. Sandeep Raghunath Thaware,
Aged about 45 yrs., Occ.Business,
R/o. Misal Layout, Nara Road,
Nagpur.

.... **NON-APPLICANTS.**

Shri A.A.Dhawas, Advocate for Applicants.

Ms Mayuri Deshmukh, A.P.P. for Non-applicant No.1/State.

Ms Prajakta S.Choudhari, Advocate for Non-applicant No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.

DATED : MARCH 10, 2021.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.
2. By these applications under Section 482 of the Code of Criminal Procedure the applicants have challenged judgment and order passed by Additional Sessions Judge-4, Nagpur in Criminal Revision Application No.427 of 2012, dated 11th September 2015 and registration of First Information Report dated 15th October 2015, bearing Crime No.683 of 2015, registered against the applicants with Non-applicant No.1-Police Station for the offences punishable under Sections 420, 463, 464, 467, 506 read with Section 34 of the Indian Penal Code.
3. On the basis of the complaint filed by the non-applicant No.2 the learned Magistrate by order dated 31st July 2012 rejected the application under Section 156(3) of the Code of Criminal Procedure and the complaint

filed by the non-applicant No.2 came to be dismissed.

4. The non-applicant No.2 therefore, filed Criminal Revision No.427 of 2012 before the Sessions Judge, Nagpur. By the impugned judgment dated 11th September 2015 the learned Sessions Judge allowed the revision and directed the learned Magistrate to take recourse to Section 156(3) of the Code of Criminal Procedure. In pursuance of the said order, the First Information Report came to be registered against the applicants on 15th October 2015.

5. The applicants have challenged the order passed by the learned Sessions Judge dated 11th September 2015 on the ground that the applicants were not made party to the revision. The learned Advocate appearing for the non-applicant No.2 does not dispute the same and stated that the applicants were not heard before passing the impugned order.

6. The learned Advocate for the applicants invited our attention to the judgment of the Apex Court in the case of *Manharibhai Muljibhai Kakadia..vs.. Shaileshbhai Mohanbhai Patel*, reported in **(2012) 10 SCC 517**, wherein the Apex Court has taken a view that in the revision challenging the order under Section 156(3) of the Code of Criminal Procedure, the accused is necessary party. Therefore, the issue involved in the present application is squarely covered by the judgment in the case of *Manharibhai Muljibhai Kakadia* (supra).

7. We therefore, pass the following order:
- i) The impugned judgment and order dated 11th September 2015 passed by learned Additional Sessions Judge-4, Nagpur in Criminal Revision Application No.427 of 2012 is quashed and set aside. Consequent First Information Report registered in pursuance of the order dated 11th September 2015 bearing Crime No.683 of 2015, registered against the applicants with the non-applicant No.1 Police Station for the offence punishable under Sections 420, 463, 464, 467, 506 and 34 of the Indian Penal Code, is also set aside.
 - ii) Criminal Revision No.427 of 2012 stands revived and restored to its file.
 - iii) The parties shall appear before the learned Sessions Judge-4, Nagpur on 10th June 2021 at 11:00 a.m.
- The learned Advocate for the non-applicant No.2 orally prayed that the non-applicant No.2, who is applicant before the Sessions Court, be permitted to add the present applicants as respondents to the revision application.
- iv) The prayer of the non-applicant No.2 is granted. The non-applicant No.2-Sandip Raghunath Thaware, who is applicant before the Sessions Court, shall implead present applicants as respondents in the revision application.

- v) The learned Additional Sessions Judge-4, Nagpur shall hear and decide the revision application as expeditiously as possible and in any case within six months from today.

Rule is made absolute in the above terms.

CRI.APPLN.NO.245/2016.

In view of disposal of Criminal Application (APL) No.74 of 2016, the instant criminal application praying for time to file certified copies of the documents does not survive, hence, it is **disposed**.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

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