

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

CRIMINAL WRIT PETITION 229 OF 2018

Mr. Gurunath Satish Topagi,
Age 55, Occu:- Service,
R/o Flat No. 204, Shriram Residency,
Katol Road, Nagpur.
Presently working at Bokaro (Jharkhand).

..... **PETITIONER**

...V E R S U S...

- 1] State of Maharashtra,
through Police Station Officer,
Police Station, Gittikhadan, Nagpur.
- 2] Smt. Archana Digambar Lanjewar,
Aged about 41 years, Occupation: Service,
R/o G/5, 133, Divyam Apartment,
Pande Layout, Khamla, Nagpur-25.

..... **RESPONDENTS**

Mr M.A. Kureshi, counsel for petitioner.
Mr N.R. Rode, APP for Respondent 1.
Mr W.S. Nayse, counsel for respondent 2. (Appointed)

CORAM: **ROHIT B. DEO, J.**
DATE: **02-02-2021.**

ORAL JUDGMENT

- 1] The petitioner is arraigned as accused in SCC
6945/2016 pending before the Judicial Magistrate First Class,
(Court 11), Nagpur.

2] The grievance of the petitioner that he was not heard by the learned Magistrate before framing the charge vide order dated 08.08.2016, for the offence punishable under Section 354 (A) (i) (ii) of the Indian Penal Code.

3] The order impugned does not indicate that the petitioner or his counsel was heard.

4] Perusal of the memo of revision preferred by the petitioner, and which revision is dismissed by the learned Sessions Judge vide judgment dated 06.02.2018, reveals that the specific ground was raised that the petitioner was not heard. However, this ground is not considered by the learned Sessions Judge.

5] The learned Additional Public Prosecutor Shri N.R. Rode is not in a position to bring to my notice any material suggesting that the petitioner was heard by the learned Magistrate. The complainant has filed an affidavit-in-response and she too has not rebutted the averment that the petitioner was not heard.

6] In view of the indubitable position on record that the

charge is framed without hearing the petitioner, the order dated 08.08.2016 passed by the learned Magistrate and the revisional order dated 06.02.2018 are quashed.

7] The matter is remitted to the learned Magistrate to hear the petitioner before framing the charge.

8] The petition is allowed.

9] The fees of the learned appointed counsel Mr. Wasudeo Nayse be quantified and paid in accordance with the Rules.

JUDGE