

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

923 CRIMINAL WRIT PETITION NO.880 OF 2022

1. Sushilkumar Keshav Shisodiya,
age 57 years, Occ. Business.
2. Shailesh Sushilkumar Shisodiya,
age 35 yrs, Occ. Business,
3. Sushma Sushilkumar Shisodiya,
age 52 yrs, Occ. Business.
R.No.1-3, R/o Sanjay Housing Society,
Flat No.35, Osmanpura, Aurangabad.
4. Namdev Dattatraya Naik Patil,
age 59 yrs, Occ. Business,
R/o Ashtavinayak Sankul,
Madhurbhoj Hotel,
Vasmat Road, Parbhani. ..Petitioners..

VERSUS

1. The State of Maharashtra
Through Police Station Gramin,
Ahmednagar, Dist. Ahmednagar.
2. Vishal Prakash Pawar,
age 41 years, Occ. Business,
R/o Sarswati Colony, Shrirampur,
Dist. Ahmednagar. ..Respondents..

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Advocate for Petitioners : Mr.Bhosale Mahesh Kalidas
APP for Respondent : Mr. G O Wattamwar
Advocate for Respondent 2 : Miss. Sonawane Sunita G.

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CORAM : SHRIKANT D. KULKARNI, J.
Dated : August 02, 2022

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ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of both the sides, at admission stage.

2. The petitioners have challenged the impugned order passed in criminal revision application no.3 of 2022 by the Additional Sessions Judge, Shrirampur, District Ahmednagar, thereby allowed the criminal revision application filed by the applicant Vishal Prakash Pawar.

3. Heard Mr. Bhosle, learned counsel for the petitioners, Mr. Wattamwar, learned APP for State/respondent no.1 and Miss. Sonvane, learned counsel for respondent no.2.

4. Mr. Bhosale, learned counsel for petitioners invited my attention to the impugned judgment and order passed in the criminal revision application no.3 of 2022. He pointed out that present petitioners were not added as respondents. Revision application came to be decided

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in their absence. It has caused serious prejudice to their rights and interests. Mr. Bhosle, has placed his reliance on following citations in support of his submissions :-

- i. **Subhash Sahebrao Deshmukh Vs. Satish Atmaram Talekar and others** reported in 2020 ALL MR (Cri) 3069 (SC).
- ii. **Priyanka Shrivastava and another Vs. State of Uttar Pradesh and others** reported in (2015) 6 Supreme Court Cases 287.

5. By taking help of aforesaid citations, Mr. Bhosale, learned counsel for the petitioners submitted that the impugned order is bad in law and liable to be quashed and set aside.

6. Mr. Wattamwar, learned APP for the State/respondent no.1 has been fair enough to admit the legal position in view of section 401 of Cr.P.C. as well as the recent decision of the Supreme Court referred above.

7. Miss Sonwane, learned counsel for respondent no.2 supported the impugned order rendered by the

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Additional Sessions Judge. She submitted that the petitioners had no right to be heard at pre-cognizance stage. The order is valid in the eye of law. It does not require any interference. She has placed her reliance on following citations :-

- i. **Dhananjay Kumar Vs. State of Chattisgarh and ors.** reported in AIR 2020 Chattisgarh 36.
- ii. **Union of India and another Vs. W N Chadha** reported in AIR 1993 Supreme Court 1082.
- iii. **Narender G. Goel Vs. State of Maharashtra and another** reported in (2009) 6 Supreme Court Cases 65.

8. She submitted that accused persons have no right to be heard at the stage of pre-cognizance. No prejudice has been caused to the petitioners. There is no merit in the petition.

9. It is an admitted position that the present petitioners were not made party respondents before revisional Court. As such criminal revision application came to be decided in their absence, resulting in allowing the criminal revision application. The point involved is whether it is necessary to hear the accused while deciding the criminal revision application where in
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the order passed by the Judicial Magistrate First Class for investigation u/s 156 (3) of Cr.P.C. is challenged.

“10. The legal position is made clear by the Hon’ble Supreme Court in case of **Priyanka Shrivastava and another Vs. State of Uttar Pradesh and others** (supra). Paragraph nos.5 and 6 are directly on the point involved in the petition. Paragraph no.5 and 6 are reproduced as under :-

- “5. Be it noted, the learned Additional Sessions Judge heard the counsel for the respondent No.3 and the learned counsel for the State but no notice was issued to the accused persons therein. Ordinarily, we would not have adverted to the same because that is the subject matter in the appeal, but it has become imperative to do only to highlight how these kind of litigations are being dealt with and also to show the respondents had the unwarranted enthusiasm to move the courts. The order passed against the said accused persons at that time was an adverse order inasmuch as the matter was remitted. It was incumbent to hear the respondents though they had not become accused persons.
6. A three-Judge Bench in [Manharibhai Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel and others](#) has opined that in a case arising out of a complaint petition, when travels to the superior Court and an adverse order is passed, an opportunity of hearing has to be given. The relevant passages are reproduced hereunder :-

46.If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under [Section 203](#) of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/suspects are not

entitled to be heard at any stage of the proceedings until issuance of process under [Section 204](#), yet in [Section 401\(2\)](#) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

11. Having regard to the recent legal position made clear by the Apex Court, certainly there is no need to refer other decisions referred by Miss Sonwane, learned counsel for respondent no.2.

12. Certainly, the impugned judgment and order passed in criminal revision application no.3 of 2022 by the Additional Sessions Judge, Shrirampur does not sustain in the eye of law. It is liable to be quashed and set aside. The revision needs to be decided afresh after giving an opportunity of being heard to the petitioners.

O R D E R

- i. Petition stands allowed.
- ii. The impugned order dated 19.5.2022 passed in criminal revision application no.3 of 2022 by the Additional Sessions Judge, Shrirampur District Ahmednagar is hereby quashed and set aside.

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- iii. The learned Additional Sessions Judge, Shrirampur is directed to decide criminal revision application no.3 of 2022 afresh, after giving an opportunity of being heard to the present petitioners according to law.
- iv. Rule is made absolute accordingly.
- v. Petition is disposed off.

(SHRIKANT D. KULKARNI, J.)

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