

Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.60 OF 2022

Prakash C. Sheth ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

Mr. Rahul Kadam for the applicant.
Mr. R.M. Pethe, APP for respondent no.1/State
Ms. Anjali Patil for respondent no.2.
Mr. Ashish Kumar i/by ALJ & Partners for respondent
no.3.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 6, 2022

PC.:

- 1.** The applicant is challenging order dated 27th November, 2021 passed by the learned Metropolitan Magistrate, 64th Court Esplanade, Mumbai passed on an Application filed below Exhibit 7 in Criminal Case No.347/PW/2018.
- 2.** The applicant who has been informant filed an application for intervention before the learned Magistrate. The applicant sought audience before the decision in discharge application filed by the accused. The said application has been contested by the accused No.2 by filing reply stating that the applicant has no right to file such application.
- 3.** The learned Magistrate rejected the application holding that

the applicant has not sought permission under sections 301 and 302 of the Code of Criminal Procedure, 1973.

4. On perusal of the application, the applicant in paragraph 6 and 7 stated as under :-

“6. The applicant states that if the discharge application is heard and decided without giving audience to the first informant/victim, the same would cause serious prejudice to the rights of the first informant/victim.

7. Even otherwise, if the discharge application comes to be allowed, it would virtually be the end of the prosecution and the same would amount to quashing of the entire offense. Therefore, in such a situation, it is mandatory to give audience to the informant/victim as per law laid down by the Supreme Court and by the Bombay High Court.”

5. On perusal of clauses 6 and 7, in my opinion, the said averments constitute seeking permission under Section 302 of the Code of Criminal Procedure Code, 1973.

6. The reliance placed on judgment of Single Judge of the High Court in **Criminal Writ Petition No. 3705 of 2018** (Prakash C. Sheth v. The State of Maharashtra & Anr.) decided on **14th February 2020** is concerned, in my opinion, the learned Magistrate ought to have allowed the application relying on the observation made by this Court in the case of **Prakash Sheth** (supra). This Court in the case of **Prakash Sheth** (supra) has held that the first informant is entitled for hearing in Revision Application claiming discharge by the accused. The said judgment has been distinguished by the learned Magistrate holding that at the stage of revision the first informant is entitled to be heard.

7. In my opinion, the interpretation adopted by the learned

Magistrate is misplaced. If the judgment of the learned Single Judge of this Court is considered as a whole, it is clear that *locus* of the first informant has been considered by this Court and has held that the person being first informant is entitled to the opportunity of hearing.

8. Therefore, in my opinion, the learned Magistrate ought to have allowed the application for intervention filed by the applicant. Hence, following order:

The application dated 29th February 2020 filed by the applicant below Exhibit 7 in Criminal Case No.347/PW/2018 is allowed.

9. Rule. Rule made is absolute in above terms. No costs.

(AMIT BORKAR, J.)