

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

CRIMINAL WRIT PETITION NO.2803 OF 2023

Kishor Nandlal Shah
and others

.....Petitioners

Versus

State of Maharashtra
and another

.... Respondents

Mr. Ishan Jani, Advocate for the Petitioners.

Ms. Khushboo D. Rohra, Advocate i/b. Dharmendra Rohra, for
the Respondent No.2.

Mr. A.R. Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th SEPTEMBER, 2023

P.C. :

1. The Petitioners have challenged the order dated 9.5.2023 passed by the Additional Sessions Judge, Sessions Court, Greater Mumbai in Criminal Revision Application No.731/2018 below Exhibit-5 which was an application for intervention filed on behalf of the Petitioners for impleading them as party Respondents in the said Revision Application.

2. The Revision Application is preferred by the Respondent No.2 herein, who was the original complainant in

the complaint before the Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai. Initially learned Magistrate directed investigation under Section 156(3) of Cr.P.C.. Pursuant to which, M.E.C.R. No.1/2015 came to be registered with Cuffe Parade Police Station, Mumbai on 8.12.2015 under Sections 120-B, 403, 406, 420 of IPC. The investigation was taken over by the Economic Offences Wing. They filed 'C-summary' report before the Additional Chief Metropolitan Magistrate, 47th Court, Mumbai. In the report it was concluded that the dispute between the Respondent No.2 and the Petitioners was purely of civil nature. The Respondent No.2 preferred a Protest Petition challenging the 'C-Summary Report'. That Petition was rejected by the Additional Chief Metropolitan Magistrate, 47th Court, Mumbai vide order dated 25.5.2018. Said order is challenged by the Respondent No.2 before the Sessions Court, Mumbai vide Criminal Revision Application No.731/2018. In that Revision Application, the Petitioners preferred intervention application which was rejected by the impugned order.

3. Heard Shri Ishan Jani, learned counsel for the Petitioners, Ms. Khushboo Rohra, learned counsel for the

Respondent No.2 and Shri A.R. Patil, learned APP for the Respondent-State.

4. Learned counsel for the Petitioners relied on the judgment of the Hon'ble Supreme Court in the case of **Manharibhai Muljibhai Kakadia and others Vs. Shaileshbhai Mohanbhai Patel and others** passed in Criminal Appeal No.1577/2012 decided on 1.10.2012. He submitted that it is a settled law that though the accused are not heard before the Magistrate, if the complainant prefers Revision Application against dismissal of the complaint then the accused have a right to be heard and participate in the Revision proceedings. He relied on the observations that the dismissal of the complaint by the Magistrate results in termination of proceedings against the persons who are alleged to have committed crime. Once a challenge is laid to such order at the instance of the complainant in a Revision Petition the suspects get right of hearing before Revisional Court although such order was passed without their participation. This observation can be found in paragraph-54 of the said judgment.

5. The learned Additional Sessions Judge has simply brushed aside the judgments relied on by the Petitioners. She has observed that the intervenors had relied upon some citations but those citations were not supporting their case unless the proposed accused found *prima facie* involved in the commission of the offence. This observation of the learned Additional Sessions Judge is not correct in view of the ratio of the judgment of the Hon'ble Supreme Court in **Manharibhai Kakadia** (supra).

6. The learned counsel for the Respondent No.2 tried to support the impugned order. However, she could not controvert the submissions made by learned counsel for the Petitioners based on the ratio of **Manharibhai Kakadia's** case (supra).

7. In this view of the matter, the impugned order is not sustainable and deserves to be set aside. The Petitioners deserve a chance of being heard in the said Criminal Revision Application No.731/2018 before the Additional Sessions Judge, Sessions Court, Greater Mumbai. Hence the following order :

:: O R D E R ::

- i. The Writ Petition is allowed.
- ii. The order dated 9.5.2023 passed by the Additional Sessions Judge, Sessions Court, Greater Mumbai below Exhibit-5 in Criminal Revision Application No.731/2018 denying an opportunity to the Petitioners to participate in the proceedings; is set aside.
- iii. The Respondent No.2 shall add the Petitioners as party Respondents in the said Criminal Revision Application.
- iv. The Additional Sessions Judge shall decide said Criminal Revision Application in accordance with law after hearing all the parties.
- v. With these observations the Petition is disposed of.

(SARANG V. KOTWAL, J.)

Digitally signed
by
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PRAKASHRAO
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2023.09.21
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