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

WRIT PETITION NO.3548 OF 2022

Gautam Ramanbhai Patel ... Petitioner
V/s.
The State of Maharashtra and Anr ... Respondents

Mr. Aditya Sawant for the petitioner.

Mr. M.G. Patil, APP for the State.

Mr. Harshad Bhadbhade with Mr. Dileep Satale,
Shagufta Patel for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 16, 2023

P.C.:

1. The challenge in this petition is to the order dated 10th August, 2022 and 5th December, 2020 rejecting under Section 302 of the Code of Criminal Procedure, 1973.
2. The petition arises out of First Information Report registered with Vile Parle, Police Station for offence under punishable under Sections 406, 409, 420, 120B, 34 of the Indian Penal Code, 1860 against respondent No.2 and 3. After completion of investigation the concern police station filed charge-sheet.
3. On 18th January, 2019 the petitioner filed an application 302 of the Code of Criminal Procedure, 1973 seeking permission to conduct prosecution in the said case. The Metropolitan Magistrate, 65th Court Andheri, Mumbai by order dated 5th December, 2020

rejected the application under Section 302 of the Code of Criminal Procedure, 1973. The Revisional Court confirmed the said order.

4. The learned advocate for the petitioner invited my attention to the judgment of single judge of this court which takes into consideration earlier judgments of Apex Court in the case of **Dhariwal Industries Vs. Kishore Wadhwani and Ors** reported in (2016) 10 SCC 378, **J.K. International Vs. State of (Govt of NCT of Delhi) and Others**, reported in (2001) 3 SCC 462 in paragraph 10. The learned single judge summarized the factors which are relevant for adjudication of such applications. In paragraph 12 of the judgment, the learned single Judge observed as under :--

12. Thus judgments, in the case of *Dhariwal Industries* (supra), *Shivkumar* (supra) and *J.K. International* (supra), govern the issue which has arisen, herein. From these judgments, the law as to right of aggrieved person, to conduct the prosecution in the Court of Magistrate can be summarised as follows :

I. Aggrieved person/victim has following types of rights :

(a). (i) right to be impleaded.

(ii) right to know.

(iii) right to assist the Court in pursuit of truth.

(iv) right to assist the Court in pursuit of truth.

(b). an aggrieved person is not altogether eclipsed from the scenario when the criminal court takes cognizance of the offence based on the report submitted by the police.

(c). though Magistrate is not bound to grant permission at the mere asking, but victim has a right to be heard and right to assist the Court in pursuit of

truth, as held in *Mallika Arjun Kotagali v. State of Karnataka*, (2019) 2 SCC 752.

(d). The Magistrate may consider as to whether the victim is in position to assist the Court and as to whether the trial does involve such complexities which cannot be handled by the victim; and on satisfaction of such facts, the Magistrate would be within his jurisdiction to grant permission to the victim.

(e). when complainant wants to take benefit as provided under Section 302 applies to every stage including the, stage of framing charge.

(f). that the provisions of Section 302 applies to every stage including the, stage of framing charge.

(g). the private person, who is permitted to conduct prosecution in the Magistrate's Court can engage a Counsel to do the needful in the Court on his behalf.

(h). the role of informant or a private party is limited during the prosecution of the case in the Court of Sessions and the Counsel engaged by him is required to act under the directions of Public Prosecutor.

5. *Per contra*, learned advocate for the respondent No.2 and 3 submitted that in the absence of commencement of trial of framing of charge such application is not maintainable, such application can be filed only after trial is commenced and after framing of charge. In support of his submission relied on the judgment of Apex Court in the case of **Rekha Murarka Vs. The State of West Bengal**, reported in (2020) 2 SCC 474.

6. Rival contentions call for consideration.

7. On perusal of the impugned orders passed by courts below. I am satisfied that neither the parameters referred by single judge of this Court in paragraph 12 have not been properly considered by

the courts below nor the parameters laid in the case of **Rekha Murarka** (supra) have been considered. Therefore, it would be in the fitness of thing that the Magistrate be directed to decide such application afresh after considering parameters laid down by single judge of this Court in paragraph 12 and ratio laid down by the Apex Court in the case of **Rekha Murarka** (supra).

8. In that view of the matter, impugned order passed by Metropolitan Magistrate, 65th Court, Andheri, Mumbai and Sessions Judge, 15th Court, Dindoshi, Mumbai dated 10th August, 2022 and 5th December, 2020 are quashed and set aside.

9. Record and Proceedings are remanded back to the learned Metropolitan Magistrate, 65th Court, Andheri, Mumbai for decision afresh.

10. The application shall be decided within a period of Four week from the date of appearance of the parties.

11. The parties shall appear before the Metropolitan Magistrate, 65th Court, Andheri, Mumbai on 18th April, 2023.

12. The Writ Petition stands disposed of in the above terms. No costs.

(AMIT BORKAR, J.)