

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 24 OF 2023

Yuvraj Sitaram Dhamale ...Applicant
Versus
1. State of Maharashtra
2. Usha Sanjay Kakade ...Respondents

Mr. Abad Ponda, Senior Advocate, a/w Nilesh Tribhuvann,
Burzin Bharucha, Satyavrat Joshi, Sanjay Rego,
Kaushal Popat and Jhanavi Shah, i/b Nilesh Mohite,
for the Applicant.

Mrs. Geeta Mulekar, APP for the State/Respondent.

Mr. Satish Maneshinde, a/w Harshad Nimbalkar, Satyam
Nimbalkar, Vrushali Maindad and Abhishek Arote, for
the Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 30th JANUARY, 2024

ORDER:-

1. This application under Section 482 of the Code of Criminal Procedure, 1973 ("the Code") assails the legality, propriety and correctness of a judgment and order passed by the learned Additional Sessions Judge, Pune, dated 12th September, 2022, in Criminal Revision Application No.171 of 2022, whereby the learned Additional Sessions Judge was persuaded to allow the revision application and set aside the order dated 5th February, 2022 passed by the learned Magistrate on an application for discharge preferred by respondent No.2 – original accused No.2

in Regular Criminal Case No.2930 of 2020 and thereby discharge respondent No.2 of the offences punishable under Sections 506(2), 506, 500 and 504 read with 34 of the Indian Penal Code, 1860 ("the Penal Code").

2. The background facts necessary for the determination by this application can be stated, in brief, as under:

(a) The applicant - first informant, is the brother of respondent No.2 – accused No.2. Accused No.1 is the husband of respondent No.2. The applicant lodged a report with the allegations that the applicant - first informant and accused No.1 were dealing in the business of construction and development of properties, in a partnership, till the year 2010. The first informant started his independent business. Thereupon, disputes arose between the first informant and accused Nos.1 and 2.

(b) The first informant alleged in the month of August, 2018, he had visited the house of the accused. At that time both the accused had abused, insulted and threatened the first informant. In the month of September, 2018, during Ganesh festival, the first informant again visited the house of accused. Accused No.2 abused and insulted the first informant. Accused No.1 also abused and insulted the first informant and

threatened to eliminate the first informant and his family members by employing hirelings and also threatened to implicate the first informant in false cases. Thereupon the first informant lodged report leading to registration of CR No.1158 of 2020 for the offence punishable under Sections 506(2), 506, 500 and 504 read with Section 34 of the Penal Code. Post completion of investigation, charge-sheet came to be lodged.

(c) Accused No.2 preferred an application for discharge. By an order dated 5th February, 2022, the learned JMFC rejected the application opining that there were *prima facie* sufficient grounds to proceed against accused No.2.

3. Being aggrieved, accused No.2 preferred Revision Application No.171 of 2022 before the Court of Session at Pune. By the impugned order, the learned Additional Sessions Judge was persuaded to allow the revision holding *inter alia* that there was *prima facie* no sufficient material to frame charge against accused No.2. Thus, the learned Additional Sessions Judge interfered with the order passed by the learned Magistrate and discharged accused No.2 of the offences punishable under Sections 506(2), 506, 504 and 500 of the Penal Code.

4. Being aggrieved, the first informant has preferred this application. The principal contention of the first informant is

that the impugned order suffers from grave procedural irregularity as the learned Additional Sessions Judge allowed the revision application and discharged accused No.2 without providing an effective opportunity of hearing to the first informant. Accused No.2 ought to have impleaded the first informant as a party respondent to the revision application. In any event, it was incumbent upon the Court of Session to issue notice to the first informant as, being a victim, the first informant had a right to be heard in a matter where the accused sought discharge. The applicant asserts in view of the provisions contained in Section 401(2) of the Code, 1973, the first informant deserved an opportunity of being heard. And, consequently, the revisional court could not have passed the impugned order to the prejudice of the first informant.

5. An endeavour was also made to assail the legality and correctness of the impugned order on the ground that the revisional court had not considered the statements of the witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973 ("the Code") which lend support to the allegations in the FIR. The impugned order, therefore, suffers from the vice of non-consideration of the relevant material which bears upon the complicity of accused No.2

6. An affidavit-in-reply is filed on behalf of respondent No.2. Controverting the contentions of the first informant, accused No.2, contends that the first informant was not entitled to be heard in a revision application as the words 'other person' appearing in sub-section (2) of Section 401 are required to be read *ejusdem generis* "accused" and do not include the first informant/complainant. Even otherwise, no party has any right to be heard before any Court exercising revisional powers and it is in the discretion of the Court to hear any party. Thus, the learned Additional Sessions Judge committed no error in deciding the revision application after providing an effective opportunity of hearing to the learned Public Prosecutor, who espouses the cause of the prosecution. Under the Code, the only right which a complainant/first informant has, is to assist the prosecution. Accused No.2 further contends, the first informant despite being aware of the proceedings before the learned Magistrate as well as the revisional court consciously chose not to participate and, therefore, now cannot be permitted to assail the impugned order.

7. Accused No.2 further contended that the impugned order is impeccable on merits. The statements under Section 164 of

the Code do not add any value to the allegations in the FIR, which are grossly belated and inherently improbable.

8. I have heard Mr. Ponda, the learned Senior Advocate for the applicant, Mrs. Mulekar, the learned APP for respondent No.1/State and Mr. Maneshinde, the learned Counsel for respondent No.2. The learned Counsel took the Court through the pleadings and the material on record.

9. Mr. Ponda, the learned Counsel for the applicant – first informant, submitted that the impugned order warrants interference on the sole ground of denial of an opportunity of hearing to the victim of the alleged offences. Amplifying the submission, Mr. Ponda would urge the position of the victim in a criminal case has been progressively recognized as a party who has an abiding interest in the prosecution. By Amendment Act 5 of 2009, the definition of the ‘victim’ came to be inserted under Clause (wa) of sub-section (2) of the Code. The victim has been conferred right to prefer an appeal against an order passed by the Court in certain circumstances. Even otherwise the provisions contained in Section 401(2) warrant an opportunity of hearing to a person, who would be prejudiced by the order passed by the revisional court. The term ‘other person’

employed in sub-section (2) of Section 401 encompasses in its fold the first informant – complainant.

10. Mr. Ponda would urge the issue is no longer *res integra* and by a series of judgments this Court has held that in a revision application against an order of issue of process or refusal to discharge, which may entail the consequence of termination of proceedings, the first informant – complainant must be heard. Reliance was placed on the judgments of this Court in the cases of *Kalyani vs. State of Maharashtra*¹, *Prakash C. Sheth vs. State of Maharashtra and anr.*² *Prakash C. Sheth vs. State of Maharashtra and anr.*³ and *Mrs. Vibha w/o Shailesh Ashapilliya vs. State of Maharashtra and ors.*⁴, *Criminal Application No.484 of 2018 dated 13th June, 2019.*

11. Mr. Ponda further submitted that the right of the victim to participate in the proceedings, even at stages prior to the commencement of the trial, has been judicially recognized. Attention of the Court was invited to the judgment of the Supreme Court in the cases of *Jagjeet Singh and others vs. Ashish Mishra alias Monu and another*⁵, *Mallikarjun Kodagali*

1 2011 SCC Online Bom 1528.

2 Cri.WP No.3075 of 2018 dtd.14/2/2020.

3 Cri.Revision Application No.60 of 2022 dtd.6/12/2022.

4 Cri. Application No.484/2018, dtd.13/6/2019.

5 (2022) 9 Supreme Court Cases 321.

*(dead) represented through Legal Representatives vs. State of Karnataka and ors.*⁶, *State of Orissa vs. Debendra Nath Padhi*⁷ and *Mohit alias Sonu and another vs. State of U.P. and another*⁸.

12. In opposition to this, Mr. Maneshinde, the learned Counsel for respondent No.2, submitted that the application deserves to be dismissed on the ground of suppression of facts. Inviting the attention of the Court to the averments in ground No.3 of the application to the effect that the first informant was not made a party in the proceedings before the learned Magistrate and the Court of Session, Mr. Maneshinde submitted that, the said assertion is a positive mis-statement of facts. Copies of the application preferred by the first informant before the Court of the learned Magistrate seeking permission to assist the learned APP and the Vakalatnama filed therein, were pressed into service to show that the first informant was fully aware of the proceedings.

13. Mr. Maneshinde countered the submissions on behalf of the applicant that it was incumbent on the revisional court to hear the first informant under sub-section (2) of Section 401 of

6 Criminal Appeal Nos.1281-82/2018.

7 (2005) 1 SCC 568.

8 Criminal Appeal No.814/2013, 1/7/2013.

the Code, 1973. The decisions rendered by this Court and relied upon by the applicant, according to Mr. Maneshinde, do not constitute good law as in none of the decisions, this Court had noted the judgment of the Supreme Court in the case of ***A. K. Subbaiah and others vs. State of Karnataka and others***⁹. In the said case, the Supreme Court has enunciated in clear and explicit terms that in a revision application the complainant is not a necessary party.

14. Mr. Maneshinde submitted that following the aforesaid judgment in the case of ***A. K. Subbaiah*** (supra) the Delhi High Court in a recent pronouncement in the case of ***Vipul Gupta and S. P. Gupta vs. State and another***¹⁰ repelled an identical contention. It has in terms been enunciated that the expression 'other person' appearing in sub-section (2) of Section 401 does not include a complainant in a revision.

15. The aforesaid submissions now fall for consideration. At the outset, it must be noted that this Court does not profess to delve into the merits of the matter and judge the impugned order on the touchstone as to whether the Court of Session correctly exercised the revisional jurisdiction. The legality and correctness of the impugned order is proposed to be tested on

9 (1987) 4 SCC 557.

10 2021 SCC Online Del 3917.

the anvil as to whether the impugned order suffers from such procedural irregularity as to cause miscarriage of justice.

16. Under Section 397, the Code confers concurrent revisional powers on the High Court and the Sessions Judge. Section 399(1) of the Code declares that in the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of Section 401. The relevant part of Section 401 reads as under:

“Section 401 High Court’s powers of revisions. – (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.”

17. Section 403 of the Code reads as under:

“403. Option of Court to hear parties. – Save as otherwise expressly provided by this Code, no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.”

18. The controversy sought to be raised in the instant application revolves around the import of the term ‘other person’

employed in sub-section (2) of Section 401 and the larger question as to whether a victim has a right to be heard in a proceeding, which may entail the consequence of termination of the prosecution initiated at his instance.

19. I propose to explore the answers from two perspectives. One, the position that emanates from statutory prescription, especially under Section 401(2) of the Code. Two, the extent of the right of the 'victim' to participate in the proceedings initiated at his instance.

20. First, the aspect of opportunity of hearing to the victim within the bounds of Section 401(2) of the Code. On a plain reading, the text of sub-section (2) of Section 401 implies that the revisional court shall not pass an order to the prejudice of the accused or other person unless he has had an opportunity of hearing. The use of negative expression "no order" and the word "shall", give a peremptory character to the mandate of sub-section (2) of Section 401. The moot question that arises for consideration is what is the import of the term 'other person'.

21. A submission was sought to be canvassed on behalf of accused No.2 that the term 'other person' must be construed *ejusdem generis* as it is preceded by the word 'accused'. The primary purpose of the said expression, it was urged, is to

provide an opportunity of hearing to a person who might have been an accused before the Court of first instance, or there is a likelihood that with the decision of the revisional court he may become an accused.

22. The aspect of opportunity of hearing to a person, who might become an accused came up for consideration before Supreme Court in the case of *Manharibhai Muljibhai Kakadia and another vs. Shaileshbhai Mohanbhai Patel and others*¹¹. The Supreme Court enunciated that the expression “other person” in the context of Section 401(2) means a person other than the accused. It includes suspects or the persons alleged in the complaint to have been involved in an offence although they may not be termed as accused at a stage before the issuance of process. The Supreme Court expounded the import of the right given to “accused” or the “other person” under Section 401(2) as under:

“48. The right given to “accused” or the “other person” under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the

11 (2012) 10 SCC 517.

Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.”

23. The core issue that crops up for consideration is whether the term, ‘other person’ is restricted to mean a person who was an accused or there is a likelihood that he might become an accused in the event the revision is allowed. On a plain reading, I find it difficult to take such a constricted view of the expression ‘other person’. I am conscious that sub-section (2) of Section 401 ends with the words, “in his own defence”. It is a well recognized principle of interpretation that no word used by the legislature shall be considered redundant as the legislature uses every word with a definite purpose. Though the expression, “in his own defence” may be appear compatible with the defence of an accused yet the generality of the expression cannot be lost sight of.

24. It is imperative to note that in the case of *Manharbhai Muljibhai Kakadia* (supra), the Three-Judge Bench, in terms enunciated that the expression “in his own defence” comprehends, inter alia, for the purposes of Section 401(2), in

defence of the order which is under challenge in revision before the Sessions Judge or the High Court.

25. In the case of *A. K. Subbaiah* (supra), on which a strong reliance was placed on behalf of accused No.2, the complaint was filed by the State Government on the basis of a sanction by the Public Prosecutor under Section 199(2) of the Code as one of the persons defamed was the Director General of Police, State of Karnataka. The petitioners therein had filed a criminal writ petition before the High Court of Karnataka to quash the order of issue of process. The petitioners had joined the Director General of Police, Karnataka and the then Chief Minister of Karnataka as respondent Nos.2 and 3. The High Court while admitting the petition had directed the deletion of the names of respondent Nos.2 and 3 holding that they were not necessary parties to the proceedings.

26. In the aforesaid backdrop, the Supreme Court held that respondent Nos.2 and 3 were not the necessary parties. The Supreme Court negated the contention of respondent Nos.2 and 3 based on sub-section (2) of Section 401 of the Code by observing as under:

“12. It is not in dispute that these two respondents Nos. 2 and 3 were not parties before the court below. Learned counsel for the appellants contended that the proceedings have been launched by the State Govt. on behalf of

respondent No. 2 and therefore indirectly respondent No. 2 being the complainant is a party to the proceedings. That is too tall a proposition. The prosecution is launched by the State Government and before the court below i.e. the trial court the only parties are the petitioners who are accused persons and the State Govt. which stands in the place of a complainant. There are prosecution witnesses and there may even be defence witnesses. But the witnesses are not parties to the proceedings and admittedly these two respondents who have been deleted by the impugned order of the High Court were not parties before the court below.

13. Learned counsel laid much emphasis on the provisions contained in sub-section (2) of Section 401.

.....

Sub-section (2) of this section talks of a situation where an order is being passed against any person and it was contended by the learned counsel that the section not only talks of accused persons but also of "or other person unless he has had an opportunity of being heard." Apparently this sub-clause contemplates a situation where a person may not be an accused person before the court below but one who might have been discharged and therefore if the revisional court after exercising jurisdiction under Section 401 wants to pass an order to the prejudice of such a person, it is necessary that that person should be given an opportunity of hearing but it does not contemplate any contingency of hearing of any person who is neither party in the proceedings in the court below nor is expected at any stage even after the revision to be joined as party. Learned counsel for the appellants was not in a position to contend that even if any contention of the appellants is accepted and the High Court accepts the revision petition as it is, there will be any situation where an order may be passed against these two respondents or they may be joined as parties to the proceedings. Reference to Section 401(2) is of no consequence so far as these two respondents are concerned.

.....

15. It is therefore clear that when the issue of process is challenged in the revision petition before the High Court what the High Court is expected to see is as to whether the complaint and the papers accompanying the complaint prima facie indicate that an offence is made out. If so, the Court below was right in issuing process against the accused persons and such proceedings can not be quashed; if the complaint and the papers accompanying the complaint, in the opinion of the High Court are such which do not prima facie disclose an offence then it will be open to the High Court to entertain the revision and quash the proceedings."

27. In the case of *Vipul Gupta* (supra), the Delhi High Court, following the aforesaid pronouncement observed as under:

“12. A bare perusal of Section 401(2) Cr P C would show other person must be akin to an accused who can participate in the proceedings. The phrase in his own defence in clause 2 of Section 401 Cr P C strengthens this belief. The complainant is never heard in his defence and hence the word “other person” referred to in Section 401 Cr P C is a person akin or similarly placed to an accused. Section 403 Cr P C is also to be read in consonance with Section 401 Cr P C as it starts with the word “otherwise expressly provided by this Code”.

.....

18. Thus as is seen above „other person“ does not include a complainant in revision. This is a State prosecution and at the highest the complainant can be a witness to the proceedings and can participate through learned APP for the State but cannot be a party to the revision petition. The judgments relied upon by the respondents did not consider A.K. Subhaiah“s (supra). I agree with the petitioner if we allow the complainant to participate before the Session's it shall change the entire nature of the proceedings from criminal to civil and hence shall hamper independence of prosecution. The complainant can at best assist the prosecution, though prosecution in such a case has to make an independent call.”

28. Interestingly, while setting aside the order passed by the revisional Court directing the complainant to be joined as a party respondent, the Delhi High Court had allowed the complainant therein to appear before the revisional court. The observations in paragraph 20 read as under:

“20. Thus, in the circumstances, the impugned order passed by the learned Revisional Court is set aside. However, this shall not disentitle the complainant to appear before the learned Revisional Court in the pending revision petitions and to assist the learned APP for the State and/or plead their case through the learned APP.”

29. Evidently, the facts in the case of *A. K. Subbaiah* (supra) were quite distinct. Under Section 199(2) of the Code, where an offence falling under Chapter XXI of the Penal Code was alleged to have been committed against the person holding a public office in respect of his conduct in discharge of his public functions, a Court of Session may take cognizance of such offence without the case being committed to it, upon a complaint in writing made by the Public Prosecutor. There are other conditions stipulated by Section 199 for lodging the complaint and in the matter of taking cognizance. Thus, a special procedure is prescribed in prosecution for defamation of public functionaries in respect of their conduct in discharge of public functions.

30. In a prosecution for defamation of public functionaries holding specified posts, it is the State which takes on the responsibility of prosecution. However, there is no embargo on the right of the person who is allegedly defamed, to independently prosecute the offences. Sub-section (6) of Section 199 thus clarifies that nothing in the said section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that

offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of such complaint.

31. The ratio of the decision in the case of *A. K. Subbaiah* (supra) in my considered view is required to be construed in the light of the peculiar facts of the said case. I find it rather difficult to accede to the submission that *A. K. Subbaiah* (supra) lays down in no certain terms that the expression ‘other person’ can under no circumstances be construed to include the first informant/complainant. The said expression, in my humble opinion, is elastic enough to include a complainant/first informant if the order which may be passed by the revisional court has the potential to cause prejudice to the complainant – first informant. Such potentiality of prejudice is imminent when there is a reasonable prospect of the very proceedings initiated at the instance of the first informant – complainant being terminated by the order of the revisional court.

32. The matter can be looked at from a slightly different perspective. In view of the pronouncement of the Supreme Court in the case of *Bhagwant Singh vs. Commissioner of Police and Another*¹², where after the investigation, the Investigating Officer files a report to the effect that no offence is made out, it

12 (1985) 2 Supreme Court Cases 537.

is incumbent upon the Magistrate to give an opportunity of hearing to the first informant. He is entitled to file a protest petition and satisfy the learned Magistrate that either the material on record is sufficient to take cognizance of the offences or further investigation is warranted.

33. *Bhagwant Singh* (supra) recognises the interest of the first informant in the proceedings in following words:

“4. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2) (ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. The Court is accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2) (i) of Section 173 decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity of being heard at the time of consideration of the report.”

34. If the first informant is entitled to an opportunity of hearing where the investigating agency files a report that no offence is made out, *a fortiori* the first informant must get an opportunity to contest the revisional proceedings which seeks to set aside an order of the Court of first instance whereby either process is issued or a plea for discharge has been rejected.

35. This leads me to the consideration on the aspect of opportunity of hearing from the standpoint of the victim having a right to participate in the prosecution. Even before the Code was amended by the Amending Act, 2009 by inserting the definition of “victim” and conferring the right on the victim to prefer an appeal, a holistic reading of the provisions of the Code indicated that in the justice dispensation system the victim was not to be totally ignored. It is one thing to say that it is the State which takes upon itself the responsibility to prosecute the offenders and bring them to justice and a completely different thing to assert that the victim shall not be allowed to participate in the proceedings, albeit within the parameters of the provisions of the Code, even when there is a prospect of termination of the underlying proceedings.

36. In the case of *J. K. International vs. State (Govt. of NCT of Delhi) and others*¹³, the Supreme Court observed as under:

“9. The scheme envisaged in the Code of Criminal procedure (for short the Code) indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the sessions court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not

13 2001(3) SCC 462.

altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code which reads thus:

“301. (2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the public Prosecutor or Assistant Public prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.”

10. The said provision falls within the Chapter titled “General Provisions as to Inquiries and Trials”. When such a role is permitted to be played by a private person, though it is a limited role, even in the sessions courts, that is enough to show that the private person, if he is aggrieved, is not wiped off from the proceedings in the criminal Court merely because the case was charge sheeted by the police. It has to be stated further, that the Court is given power to permit even such private person to submit his written arguments in the Court including the sessions court. If he submits any such written arguments the Court has a duty to consider such arguments before taking a decision.

11. In view of such a scheme as delineated above how can it be said that the aggrieved private person must keep himself outside the corridors of the Court when the case involving his grievance regarding the offence alleged to have been committed by the persons arrayed as accused is tried or considered by the Court. In this context it is appropriate to mention that when the trial is before a magistrate court the scope of any other private person intending to participate in the conduct of the prosecution is still wider. This can be noticed from Section 302 of the Code which reads thus:

“302. (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a public prosecutor or Assistant Public prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.”

12. The private person who is permitted to conduct prosecution in the magistrates court can engage a counsel

to do the needful in the Court in his behalf. It further amplifies the position that if a private person is aggrieved by the offence committed against him or against any one in whom he is interested he can approach the magistrate and seek permission to conduct the prosecution by himself. It is open to the Court to consider his request. If the court thinks that the cause of justice would be served better by granting such permission the courts would generally grant such permission. Of course, this wider amplitude is limited to Magistrates courts, as the right of such private individual to participate in the conduct of prosecution in the sessions court is very much restricted and is made subject to the control of the Public Prosecutor. The limited role which a private person can be permitted to play for prosecution in the Sessions Court has been adverted to above. All these would show that an aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognizance of the offences based on the report submitted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them.”

37. Following the aforesaid pronouncement, this Court in the case of *Kalyani vs. State of Maharashtra*¹⁴ set aside the order of the revisional court which was passed without providing an opportunity of hearing to the complainant. Referring to an earlier decision in the case of *Shriram Nagordhar Mahajan and ors. vs. State of Maharashtra and anr.*¹⁵ it was observed that in view of the provisions contained in Section 401(2) of the Code, it is necessary for the revisional court to hear the person likely to be affected before the order is passed to the prejudice of such person.

14 2011 SCC Online Bom 1528.

15 2006 Cri LJ 2216.

38. In the case of *Prakash Sheth* (supra) another learned Single Judge, after noting the judgments of the Supreme Court in the cases of *Manharibhai Muljibhai Kakadia* (supra) and *J. K. International* (supra), observed that if ultimately revision petition is allowed then the criminal proceedings initiated by the first informant would be quashed by granting discharge to accused therein. In that view of the matter, the first informant is certainly entitled for hearing in the revision petition claiming discharge by accused.

39. In the case of *Sundeep Kumar Bafna vs. State of Maharashtra and another*¹⁶ the Supreme Court considered the role of Public Prosecutor and private Counsel in prosecution and after adverting to the judgments in the cases of *Bhagwant Singh* (supra), *J. K. International* (supra) and *Shiv Kumar vs. Hukum Chand*¹⁷ culled out the legal position as under:

“32. The upshot of this analysis is that no vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent. So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the Trial so that his interests

16 (2014) 16 Supreme Court Cases 623.

17 (1999) 7 SCC 467.

in the prosecution are not prejudiced or jeopardized. It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing.”

(emphasis supplied)

40. In the context of the growing recognition of the rights of the victim, what should be the approach of the Courts. In the case of *Mallikarjun Kodagali* (supra) the Supreme Court delineated the approach to be adopted as under:

“The rights of victims, and indeed victimology, is an evolving jurisprudence and it is more than appropriate to move forward in a positive direction, rather than stand still or worse, take a step backward. A voice has been given to victims of crime by Parliament and the judiciary and that voice needs to be heard, and if not already heard, it needs to be raised to a higher decibel so that it is clearly heard.”

(emphasis supplied)

41. Evidently, the definition of the ‘victim’ is quite wide and expansive. It means any person who has suffered any loss or injury caused by reason of the act or omission of the accused. The Parliament has taken care to further expand the definition by including victim’s guardian or legal heir. The approach of the Court ought to be one which advances the legislative intent.

42. It may be apposite to conclude with the judgment of the Supreme Court in the case of *Jagjeet Singh* (supra), wherein the

Three-Judge Bench of the Supreme court emphasized in clear and explicit terms as under:

“23. A ‘victim’ within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a ‘victim’ has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that ‘victim’ and ‘complainant/informant’ are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a ‘victim’, for even a stranger to the act of crime can be an ‘informant’, and similarly, a ‘victim’ need not be the complainant or informant of a felony.”

(emphasis supplied)

43. In view of the aforesaid exposition of law, it may not be permissible to construe expression ‘other person’ in a restricted sense, as propounded on behalf of accused No.2.

44. The fact that the first informant had sought leave to assist the prosecution, by filing an application before the learned Magistrate, if properly construed, evinces the interest of the first informant in the prosecution. The first informant thus deserved an opportunity of hearing.

45. The impugned order thus deserves to be quashed and set aside as its effect was to terminate the proceedings qua accused No.2, without providing an opportunity of hearing to the first informant. I am, therefore, inclined to allow the application and remand the matter back to the revisional court for a decision

afresh after providing an opportunity of hearing to the first informant.

46. Hence, the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The impugned order stands quashed and set aside.
- (iii) The revision application is restored to the file of the learned Additional Sessions Judge, Pune.
- (iv) The learned Additional Sessions Judge is requested to decide the revision application afresh after providing an opportunity of hearing to the first informant.
- (v) By way of abundant caution, it is clarified that this Court has not entered into the merits of the matter and the Revisional Court shall decide the revision application on its own merits and in accordance with law.
- (vi) The parties shall appear before the Revisional Court on 20th February, 2024.

[N. J. JAMADAR, J.]