

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 3765 OF 2018**

Kalpesh Babubhai Rathod and anr. Petitioners
v/s.
The State of Maharashtra and ors. Respondents

WITH
CRIMINAL WRIT PETITION NO. 38 OF 2023

Chetan Ramniklal Shah and anr. Petitioners
v/s.
The State of Maharashtra and ors. Respondents

Mr. Ashok Mundargi, Sr. Advocate a/w. Mr. Niranjan Mundargi i/b.
Mr. Madhur Surana for the Petitioners in WP/3765/2018.
Mr. Prasanna Tare a/w. Mr. Akshada Shetye for the Petitioners in
WP/38/2023.
Mr. J.P. Yagnik, APP for the State.
Mr. Shirish Gupte, Sr. Advocate i/b. Mr. Nilesh Pandey for
Respondent No.2 in both petitions.

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**CORAM: A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATED : 22nd FEBRUARY, 2024.

P. C. :-

- 1) Rule. Rule made returnable forthwith and with the consent of learned counsel for respective parties, taken up for hearing.
- 2) Present petitions under Article 226 and 227 of the Constitution of India are filed against the Order dated 22nd March, 2018 passed by the Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No.939 of 2017, thereby directing the police authorities to lodge crime against the Petitioners under Section 156(3) of Criminal Procedure Code.

3) Heard Mr. Mundargi, learned senior counsel for the Petitioners, Mr. Gupte, learned senior counsel for the Respondent No.2 and Mr. J.P. Yagnik, learned APP for the State. Perused record produced before us.

4) Record indicates that, Respondent No.2 had filed complaint bearing C.C.No.12/SW/2017 before Metropolitan Magistrate, 53rd Court, Mulund, Mumbai, for directing Bhandup Police Station, Mumbai to register a crime against the Petitioners for the offences more specifically mentioned in the prayer clause of the said complaint. The learned Magistrate by its order dated 07th February, 2017 was pleased to reject the prayer of the Respondent No.2 for direction under Section 156(3) of Cr.P.C. However, the said complaint was kept pending for further proceedings.

4.1) Feeling aggrieved by the said order dated 07th February, 2017 the Respondent No.2 preferred Criminal Revision Application No.939 of 2017 before the Court of Sessions at Greater Mumbai. It is an admitted fact on record that, while preferring the said revision, Respondent No.2 did not implead Petitioners as necessary party Respondents. The learned Judge of the Revisional Court by its impugned Order dated 22nd March, 2018 allowed the said revision, set-aside the order dated 07th February, 2017 and directed the police Authorities to conduct investigation under section 156(3) of the Code of Criminal Procedure, by registering FIR.

4.2) In pursuance of the said order dated 22nd March, 2018 passed by the Revisional Court, FIR bearing M.E.C.R.No.02/2018 has been registered

by the Respondent No.1 – Bhandup Police Station, Mumbai on 05th July, 2018 for the offences punishable under Sections 191, 199, 200, 207, 406, 419, 420, 427, 465, 467, 471, 506(2) read with Section 34 of the Indian Penal Code.

5) As noted earlier, while preferring the Criminal Revision Application No.939 of 2017, the Respondent No.2 did not implead the Petitioners as necessary parties.

6) In the case of *Manharbhai Muljibhai Kapadia & Another v/s. Shaileshbhai Mohanbhai Patel and Others* reported in (2012) 10 SCC 517, the Hon'ble Supreme Court has held that, the accused get right of hearing before the Revisional Court although the impugned order therein was passed without their participation. The accused person cannot be deprived of hearing on the face of express provision contained in Section 401(2) of the Cr.PC. On this count, the impugned Order of the High Court was set-aside by the Hon'ble Supreme Court. The said view is further reiterated by the Hon'ble Supreme Court in the case of *Santhakumari & Ors. v/s. The State of Tamil Nadu & Anr.* in Petition(s) for Special Leave to Appeal (Crl.) No(s).4230/2023 by its Order dated 12th May, 2023.

7) In view of the above, Mr. Gupte, learned senior counsel appearing for the Respondent No.2/Complainant fairly conceded that, the impleadment of the Petitioners in Criminal Revision Application No.939 of 2017 was necessary, rather imperative. He submitted that, in view of the

clear enunciation of law by the Hon'ble Supreme Court in the case of *Manharbhai M. Kapadia* (supra), the Order dated 22nd March, 2018 passed by the Revisional Court be set-aside and the said Revision be remanded back to the learned Judge of the Revisional Court for its hearing afresh.

8) In view thereof, we set-aside the order dated 22nd March, 2018 passed by the learned Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No.939 of 2017 and remand the said Revision back for hearing it afresh by the concerned Court.

8.1) We direct the Respondent No.2 i.e., the Original Revisional Applicant to implead the Petitioners as Respondents in the said revision. Necessary amendment be carried out within two weeks from the date of uploading of the present Order on the Official Website of the High Court, Bombay.

8.2) As a consequent thereof, M.E.C.R.No.02/2018 registered with Bhandup Police Station, Mumbai is also quashed and set-aside.

8.3) We direct the learned Judge of the Revisional Court to hear the said revision after affording an opportunity of being heard to the Petitioners/proposed Respondents and to decide it afresh in accordance with law.

9) Writ Petitions are accordingly allowed in terms of prayer clause (b).

Rule is made absolute in the aforesaid terms.

10) All contentions of both the parties are kept open to be raised

before the Revisionsal Court.

11) In case, the Revisional Court has already destroyed the record being more than 05 years old, in that event, the Respondent No.2 is granted liberty to re-construct the said record as per the City Civil and Sessions Court Rules.

11.1) As the Revision Application is of the year 2017, we request the learned Judge seized of the said Revision Application to decide the same within a period of 03 months from the date of amendment and/or re-construction of the said Revision Application whichever is earlier.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)