



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPA] NO. 732/2024
IN CRIMINAL APPEAL NO.383/2024.

Rajnish Rajendrapal Naidu

-VERSUS-

State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Appellant – R.R. Naidu, Inperson.
A.P.P. for Respondent/Non-applicant.
Shri A.V. Pande, Advocate for Applicant/Intervenor.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : SEPTEMBER 09, 2024.

Heard.

2. This is an application seeking to intervene in the matter for the reasons stated therein. Precisely, a proceeding under Section 125 of the Code of Criminal Procedure was going on between the husband and wife. The appellant/ husband has filed an application in terms of Section 340 of the Code before the trial Court i.e. Family

Court, which was earlier rejected. After the decision in 125 proceeding, the appellant filed separate application under Section 340 of the Code praying to the Court to take appropriate action for the offence punishable under Section 195 of the Code. The appellant has filed this application, since it was directed by the trial Court that the issue being separate, he may file a separate petition/ application.

3. The Family Court after hearing the appellant was pleased to dismiss/reject the said application vide its order dated 08.07.2024, which is the subject matter in the appeal here.

4. In the meantime the applicant/ intervenor i.e. wife, against whom the proposed action in terms of Section 340 of the Code was sought, has appeared as an intervenor and has urged to give right of hearing. The appellant has strong objection for allowing this application to partake in proceeding on the ground that the offence relates to administration of justice, it is for the Court to take a

call and after making preliminary enquiry, if any credible material is found then only notice can be issued. The appellant/in-person for this purpose has relied on the decisions in case of (1) **Anju Chaudhary .vrs. State of U.P. and another – S.L.P. (Cri) No.9475/2008** decided on 13.12.2012 and **Pritish .vrs. State of Maharashtra and others – Criminal Appeal No.1188/2001** decided on 21.11.2001 to contend that while initiating action under Section 340, the would be accused has no right of hearing, nor notice has to be issued.

5. The learned Counsel for the applicant/ intervenor took us through Section 341 of the Code to contend that this Section has inbuilt provision to issue notice to the parties concern, in case of appeal. We have also gone through the said provision.

6. We are mindful of the fact that the application under Section 340 of the Code has not been filed before us to adjudicate the issue, rather we are sitting in appeal filed in terms of Section 340 of the Code. It is well known principles that if any

order is passed in favour of a party, who was not in the proceeding before the Trial Court, but, when that order is challenged by rival, the party gets a right to defend the order which is favourable to him. We see no reason to throw the intervenor out of the Court. Perhaps whatever the submissions would be, the same will be tested on merits. In view of that, Criminal Application is allowed. The applicant / wife is permitted to intervene in the matter.

7. The appellant to supply complete set of papers to the intervenor, through all modes. List the appeal for consideration in second week of October, 2024.

JUDGE

JUDGE