



2024:DHC:4220



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 19.03.2024
Pronounced on: 24.05.2024

+ **CRL.M.C. 8758/2023 & CRL.M.A. 7381/2024**

VLS FINANCE LTD

..... Petitioner

Through: Mr.Bharat Chugh, Mr.Jai
Allagh, Mr.Maanish M.
Choudhary, Mr.Ashok Kr.
Sharma, Advs.

versus

STATE NCT OF DELHI AND ORS

..... Respondents

Through: Mr.Aman Usman, APP for
R-1/State.

Mr.Vijay Agarwal, Mr.Gurpreet
Singh, Mr.Jatin S.Sethi, Advs.
for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Order dated 26.10.2023 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge-05, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'ASJ') in Criminal Revision Petitions being Cr.Rev. 173/2022, 174/2022, 175/2022, 176/2022, 182/2022, 183/2022, 184/2022, 202/2022, 208/2022, 209/2022, 380/2022, 381/2022, 382/2022, and 383/2022 (hereinafter collectively referred to as the 'Revision Petitions'),

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dismissing the application(s) filed by the petitioner herein seeking impleadment and to be heard in all the Revision Petitions pending before the learned ASJ.

2. The above Revision Petitions have been filed by the respondent nos. 2 to 10 herein against the Orders dated 07.03.2022 and 10.12.2021 passed by the learned Additional Chief Metropolitan Magistrate-01, Central District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court') in Cr.No. 292282/2016 emanating from the FIR No.90/2000 registered at Police Station: Connaught Place, New Delhi under Sections 406/409/420/467/468/471/477A of the Indian Penal Code, 1860 (in short, 'IPC'); Cr.No. 291854/2016 emanating from FIR No.99/2002 registered at Police Station: Connaught Place, New Delhi under Sections 406/409/420/424/467/469 of the IPC and in Cr.No. 291292/16 emanating from FIR No.315/2005 registered at Police Station: Naraina, South-West District, Delhi under Sections 380/411 of the IPC, all titled ***State v. S.P. Gupta & Ors.***, whereby the learned Trial Court has framed charges against the revisionists/accused persons.

Factual Matrix:

3. For the sake of convenience, the allegations in the FIR No.90/2000 are being referred herein, as the allegations in the other FIRs are almost similar, and in any case, for answering the question of law raised in the present petition, allegations in the FIR(s) are not really relevant.



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4. The said FIR No.90/2000 has been registered on a complaint by the petitioner herein, alleging that around December, 1994, the accused persons approached the petitioner company with the proposal to finance a hotel project likely to be set up around Connaught Place, New Delhi. It is alleged that the accused represented to the petitioner company that they would invest Rs.21 crores towards equity share capital in the respondent no.2 company in case the petitioner company was ready to finance the said project upto the tune of Rs. 7 crores and pick-up 25 percent equity participation in the respondent no.2 company. It is alleged that the accused represented to the complainant that this investment would entitle the project to seek a loan from financial institutions. It is alleged that the accused persons dishonestly deceived the petitioner company into believing that they could garner the abovesaid amount and assured the petitioner that their money was secure since nearly three-fourth of the equity would be infused by the accused persons and their associates. It is alleged that believing the said assurances to be true, the petitioner company agreed to finance the project by accepting share equity of Rs.7 crores. It is further alleged that on 11.03.1995, the accused persons induced the petitioner company to enter into a Memorandum of Understanding (in short, 'MoU'), and in terms of the said agreement, the petitioner was obliged to subscribe to 70 lacs equity shares of the face value of Rs. 10 each of the respondent no.2 company for cash at par with payment of Rs. 1 per share as the application money. The accused induced the petitioner company to issue a cheque for a sum of Rs.70 lacs. It is alleged that thereafter, using a similar *modus operandi* and giving false assurances



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to the petitioner company stating that the accused persons will contribute heavily to the equity of the respondent no.2 company and that they have been able to collect the remaining equity, however, by showing false transactions by rotating the money, the accused induced the petitioner company to further invest a sum of Rs.6,30,00,000/- and to make a further payment of approximately Rs.9,50,00,000/- towards interest bearing security deposits to the accused persons. The petitioner company alleged the revisionists/accused persons of hatching a criminal conspiracy to defraud the petitioner company and inducing it to enter into the MoU dated 11.03.1995 and invest a sum of Rs.7 Crores in the equity shares of M/s Sunair Hotels Limited, that is, the respondent no.2 herein, by representing that they would also invest a sum of Rs. 21 Crores in the equity shares of the respondent no.2 herein, and also made the petitioner invest in interest bearing Security Deposits of approximately Rs. 9.5 crores from 21.11.1995 to 23.04.1996. It is alleged that the accused then did not make any actual contribution to the equity shares of the respondent no.2. It is further alleged that the accused rotated the money 21 times between the group companies of the respondent no.2, in order to show the infusion of equity capital and also forged documents to defraud the petitioner.

5. The first Charge-Sheet was filed against the accused S.P. Gupta (the respondent no. 3), Kaveen Gupta (the respondent no. 6), Vipul Gupta (the respondent no. 7), and M/s Sunair Hotels Ltd. (the respondent no. 2), on 18.11.2003.

6. The petitioner then filed an application under Section 173(8) of the Cr.P.C. praying for a direction for further investigation.



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7. Supplementary Charge-sheet was filed in 2004 and 2005 alleging that S.P. Gupta (the respondent no. 3) had forged a Power of Attorney dated 24.04.1997 and created a false MOU dated 10.03.1995 between Sunaero Ltd. (signed by S.P. Gupta) and H.J. Consultants Pvt. Ltd. (signed by Vipul Gupta) whereby 13 properties belonging to various individuals, companies, and entities were shown to have been sold through H.J. Consultants Pvt. Ltd. to Sun Aero Ltd.

8. Thereafter, two more complaints were filed by the petitioner herein, resulting in abovementioned FIR no. 99/2002 registered at Police Station: Connaught Place, New Delhi and FIR no.315/2005 registered at Police Station: Naraina, South West District, Delhi. Charge-Sheets have been filed in these FIR(s) as well.

9. By the Order dated 10.12.2021, the learned Trial Court has framed charges against the accused persons under Section 420 read with Section 120B of the IPC and Sections 467/120B of the IPC or in the alternative, under Sections 471/120B of the IPC against all the accused persons and additionally a charge under Section 466 of the IPC or Section 471 read with Section 120B of the IPC has been framed against the accused S. P. Gupta, in Cr.No. 292282/2016. Charges have also been framed by the learned Trial Court against the revisionists/accused in the proceedings emanating from the other two FIRs as well.

10. The Revision Petitions before the learned ASJ have been filed by the accused persons against the said Order on Charge in the abovementioned FIRs passed by the learned Trial Court.



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11. The petitioner herein filed applications seeking impleadment and an opportunity to be heard in the pending Revision Petitions. The learned ASJ, by the Impugned Order, rejected the said applications filed by the petitioner, however, granted the petitioner the liberty to assist the Court through the medium of the learned Additional Public Prosecutor for the State or to plead its case through the learned APP for the State.

12. Aggrieved of the said Order, the petitioner has filed the present petition.

Submissions of the Learned Counsel for the Petitioner:

13. The learned counsel for the petitioner submits that the learned ASJ has erred in not considering the fact that the petitioner, who is the complainant/victim, has a legally vested and unbridled participatory rights to be heard at every stage of the criminal proceedings, right from the stage of investigation till the culmination of the proceedings in an appeal or revision. In support, he places reliance on the judgment of the Supreme Court in *Jagjeet Singh & Ors. v. Ashish Mishra @ Monu & Anr.*, (2022) 9 SCC 321. He submits that the complainant/victim, that is, the *de facto* sufferer, cannot be made to sit outside the Court as a mute spectator and let the Court adjudicate between the accused and the State. He submits that the above judgment of the Supreme Court has been followed by this Court in various judgments, granting an opportunity to the victim/complainant to be heard in the Revision Petition. He refers to the various Orders of this Court, including Order dated 25.01.2023 in CrI.Rev.P. 72/2023



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titled *State of NCT of Delhi v. Sushil Ansal & Ors.*; Order dated 10.01.2023 in Crl.Rev.P.728/2022 titled *Gopal Ansal v. State of NCT of Delhi & Anr.*; Order dated 05.09.2022 in Crl.Rev.P. 568/2022 titled *Association of Victims of Uphaar Tragedy v. State of NCT of Delhi & Ors.*; Order dated 21.02.2023 in Crl.M.C. 1203/2023 titled *Sonali Ratna v. The State (NCT of Delhi)*.

14. He submits that the learned ASJ has rather placed erroneous reliance on the judgment of this Court in *Vipul Gupta; and S.P. Gupta v. State & Anr.*, Neutral Citation No.2021:DHC:2364. He submits that the said judgment has been impliedly overruled by the subsequent judgment of the Supreme Court in *Jagjeet Singh* (supra). He submits that various precedents of the Supreme Court, this Court, and various other High Courts were cited before the learned ASJ in support of the said submission, however, were not considered by the learned ASJ. He refers to the following judgments:

- a) *Prakash C. Sheth v. State of Maharashtra & Ors.* 2021 (2) BomCR (Cri) 315.
- b) *Jai Prakash Dubey v. Vipin & Ors.*, MANU/MP/0381/2020
- c) *Md. Muturza v. State of Bihar & Ors.* (Order/Judgment dated of Patna High Court in Criminal Revision No. 1099/2013)
- d) *George Renato Bader v. State of Uttarakhand & Ors.* 2009 SCC OnLine Utt 1263
- e) *J.K. International v. State (Govt. of NCT of Delhi) & Ors.*, (2001) 3 SCC 462
- f) *Ram Phal v. State & Ors.*, 2015 SCC Online Del 9802
- g) *Kalyani v. State of Maharashtra & Ors.* 2011 SCC OnLine Bom 1528
- h) *Gunjari Devi v. State of Bihar* (Order/Judgment dated 07.07.2014 of the Patna High Court in Criminal Revision 347/2014)
- i) *Shriram Nagordhar v. State of Maharashtra*, 2006 SCC



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OnLine Bom 1362

15. He submits that if a victim/complainant has a right to file a Criminal Revision to stop the culmination of a criminal proceeding, then by the same logic, the victim/complainant has a right to oppose a criminal revision seeking the culmination of a criminal proceeding, like in the present case where the respondents have filed the Revision Petitions before the Court of the learned ASJ challenging the Order of the learned Trial Court framing charge against them.

16. He submits that Section 401 of the Cr.P.C. is not a disabling provision, but an enabling provision. It does not deny the locus to the victim/complainant but is meant to safeguard the interest of an accused/prospective accused when the Complainant/State files a revision petition. Equally, when the accused files a revision petition, it would protect the interest of the complainant/victim. Placing reliance on the judgment of the Bombay High Court in **Prakash C. Sheth** (supra); **Kalyani** (supra); and of the Madhya Pradesh High Court in **Vijay Tiwari v. Neeraj Bediya & Ors**, (Order/judgment dated 21.06.2017 in CRR 627/2015), he submits that the term 'other person' under Section 401(2) of the Cr.P.C. includes the Complainant/Victim/Informant and any other person whose rights are getting affected. He submits that the complainant/victim has a right to be heard in a revision petition filed by the accused person challenging the Order on Charge passed by the learned Trial Court. He submits that the complainant/victim not only has the right to be heard but also has the right to be impleaded as a party in the Revision Petitions, for the fair adjudication of the same.



17. He submits that such a narrow interpretation, if given to Section 401 of the Cr.P.C., will have absurd and dangerous outcomes and would render the said provision unconstitutional and will seriously affect the rights of the complainant/victim. Referring to various judgments, he submits that in many cases, the complainant/victim has been impleaded in the Revision Petition filed by the accused.

18. Placing reliance on the judgment of the Supreme Court in ***J.K. International*** (supra), he submits that even in a petition filed by the accused under Section 482 of the Cr.P.C. or Article 226 of the Constitution of India seeking quashing or culmination of the criminal proceedings against him, the complainant/victim has an independent right to be heard. He submits that in the present case, if the revisionists/accused persons succeed in their petition before the learned ASJ without the participation of the petitioner, then the same would discharge them from the Offence and, therefore, in view of the judgment of the Supreme Court in ***JK International*** (supra), the petitioner shall have a right to be heard and the Impugned Order is liable to be set aside.

19. Placing reliance on the judgment of the Supreme Court in ***Bhagwant Singh v. Commissioner of Police & Anr.***, (1985) 2 SCC 537, he submits that if the victim/complainant is given a right to file a 'protest petition' where a closure report is filed by the police, there is no reason why the victim/complainant be not impleaded when the accused files a Revision Petition challenging the Order framing charge against the accused.



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20. He submits that the judgment of the Supreme Court in **Jagjeet Singh** (supra) cannot be distinguished to state that the said judgment was merely in the context of grant of Bail and will not be applicable in each and every case, including in the case of Revision Petition challenging the Order framing charge. Placing reliance on **Peerless General Finance and Investment Company v. CIT**, (2020) 18 SCC 625; **Ram Manohar Lohia & Ors. v. State of UP & Ors.**, 1967 SCC OnLine All 31; **Kamleshkumar Ishwardas Patel v. Union of India**, 1994 SCC OnLine Bom 404; and, **Devas Employees Mauritius Pvt. Ltd. v. Antrix Corporation Limited & Ors.** 2023 SCC OnLine Del 1608, he submits that the judicial propriety, dignity, and decorum demand that even the *obiter dictum* and observations of the Supreme Court ought to be accepted as binding by the Courts subordinate to it.

21. He submits that any judgment passed prior to **Jagjeet Singh** (supra) and holding a view contrary thereto, is impliedly overruled. He places reliance on **State of Punjab & Anr. v. Devans Modern Breweries Ltd. & Anr.**, (2004) 11 SCC 26.

22. Placing reliance on **Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Ltd.**, (2008) 14 SCC 171, he submits that the judgment in **Jagjeet Singh** (supra) would have retrospective application.

23. He submits that, therefore, the victim/complainant has an unbridled participatory right in form of being impleaded in a Revision Petition filed by the accused, of independently addressing arguments, filing a reply, written submissions as also the judgments' compilation before the said Court.



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24. He submits that the petitioner is a Victim as also the complainant/informant in a number of serious economic offences committed by the revisionists/accused persons. He submits that the revisionists/accused have previously also made almost 11 attempts, by filing various petitions seeking the culmination/termination of the subject criminal proceedings. The petitioner was impleaded and heard in these petitions, and some of them were also dismissed.

25. He submits that the impleadment and the right of being heard becomes more relevant in the facts of the present case, as the learned Public Prosecutor before the learned Trial Court had, on earlier occasions, attempted to withdraw the prosecution by filing application(s) in that regard. He submits that, fortunately, the notice was issued to the petitioner and it was permitted to contest the said application filed under Section 321 of the Cr.P.C. before the learned Trial Court. It was only due to the intervention of the petitioner that the State subsequently filed an application seeking withdrawal of its earlier application filed under Section 321 of the Cr.P.C. for withdrawal of prosecution. He submits that the issue of withdrawal of the application filed under Section 321 of the Cr.P.C. by the State reached right up to the Supreme Court, and the Supreme Court has upheld the withdrawal of the Section 321 Cr.P.C. application. He submits that, therefore, the learned ASJ has ignored the chequered history of the present case while passing the Impugned Order.

26. He submits that the respondent nos. 3, 4, and 7 have indirectly sought the quashing of the Order on Charge and the same is pending before this Court as CrI.M.C. No. 558/2022, CrI.M.C. 559/2022 and



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CrI.M.C. 561/2022, and the petitioner is being heard and is impleaded as respondent no.2 in these petitions. He submits that the revisionists/accused persons have also sought for stay on the proceedings before the learned Trial Court in several other petitions, however, the same were declined by the concerned Courts.

27. He submits that the right of being heard becomes more important considering the fact that each of the revision petitions filed by the revisionists/accused persons runs into a huge number of pages and has a lengthy file, and since the learned Public Prosecutors are not regularly available, and as they have to assist more than one Court at a given point of time, and are also overloaded with work in our criminal justice system, they may not be in a position to properly assist the Court in the Revision Petitions filed by the respondents.

28. He submits that the majority of the judgments relied upon by the learned APP as also the learned counsel for the respondent nos.2 on Sections 301/302/24(8) of the Cr.P.C. to contend that the petitioner can merely assist the learned Public Prosecutor, are not relevant to the present case seeking the right to participate in a criminal revision petition under Section 397 of the Cr.P.C., as the said judgments are related to the trial and inquiry and not to a criminal revision petition/proceedings, which falls into a different Chapter of the Cr.P.C.. He submits that the petitioner does not wish to be impleaded in the criminal trial pending against the respondent, but only in the criminal revisions filed by them.

29. He submits that, therefore, the petitioner cannot be deprived of the rights to get impleaded, heard, and intervene in the criminal



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revision proceedings pending before the learned ASJ, and the Impugned Order is liable to be set aside.

Submissions of the Learned APP:

30. Mr.Aman Usman, the learned APP submits that the duties and responsibilities of a Public Prosecutor are multi-fold. He submits that the right of the State, through its Prosecutors, ensures that the law not only protects the Fundamental Rights of the victims of crime, but also of the witnesses, the accused, and the Court, to whom the Prosecutors owe a responsibility. He submits that it is the Prosecutor who has the full access to the evidence of a criminal case and helps the Court as a central figure to ensure that justice is done. He submits that, therefore, the Public Prosecutors are the persons who have the right to effectively defend the State in a State case. In support, he places reliance on the judgment of this Court in *Antosh v. State*, Neutral Citation no.2023:DHC:4430.

31. Placing reliance on the judgment of the Supreme Court in *Rekha Murarka v. State of West Bengal & Anr.*, (2020) 2 SCC 474, he submits that the role of a Public Prosecutor is crucial, as he is not just a representative of the aggrieved person, but that of the State and its citizens at large. He submits that in view of Section 301 and proviso to Section 24(8) of the Cr.P.C., it is clear that the victim/complainant can engage a private counsel only to assist the Public Prosecutor and, that too, subject to the permission of the Court. He submits that by the use of the term ‘assist’ in the proviso to Section 24(8) of the Cr.P.C., the intent of the Legislature is that the



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victim/complainant's counsel should only have a secondary role *qua* the trial in a State case, and would have a limited right to act therein under the directions of the Public Prosecutor and submit written arguments after the evidence is closed in the case.

32. He submits that the role of private counsel in a State case is that of a junior advocate assisting the Public Prosecutor. In support, he places reliance on the judgment of the Supreme Court in ***Shiv Kumar v. Hukum Chand & Anr.*** (1999) 7 SCC 467. He submits that if the role of a Public Prosecutor is allowed to shrink to a mere supervisory role, then the same would amount to a State case becoming a combat between the private party and the accused and would be against the legislative mandate in Section 225 of the Cr.P.C..

33. Placing reliance on the judgment of this Court in ***M/s Bennett Coleman & Co. Ltd. & Ors. v. State (NCT of Delhi) & Anr.***, Neutral Citation No.2023:DHC:8676, he submits that the interpretation of the term '*other person*' in Section 401(2) of the Cr.P.C. cannot be wide enough to include persons which are otherwise not affected by an Order under challenge in a revision petition.

34. He submits that while the petitioner has a right to argue or to be heard in the Revision Petitions, it is the prosecution who will lead the case and file pleadings in the said matter. He submits that the said right of the victim/complainant is also subject to the discretion of the learned ASJ. He submits that Section 302 of the Cr.P.C. allows the prosecution to be conducted by any other person, other than the Public Prosecutor, but the same is also subject to the discretion of the learned



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ASJ, and cannot be claimed as a matter of right by the complainant/victim.

Submissions of the Learned Counsel for the Respondent No.2:

35. The learned counsel for the respondent no.2 submits that complainant has no absolute or unbridled legal right of impleadment and being heard before a Revisional Court, in light of the express legal bar under Section 399 read with 401 of Cr.P.C.. He submits that it is only an accused or a person of similar nature that can be heard in the said proceedings. He submits that the complainant does not fall within the term '*other person*' as is used in Section 401 of the Cr.P.C.. In support, he places reliance on the judgment of this Court, between the parties involved in the present petition, that is, in ***Vipul Gupta*** (supra).

36. He submits that there is no provision in the Cr.P.C. which provides for the impleadment of the victim as a necessary party. Placing reliance on the judgment of this Court in ***Saleem v. The State of NCT of Delhi & Anr.***, Neutral Citation No.2023:DHC:2622, he submits that there is no requirement in law to implead the victim/complainant as a party in the revision proceedings so as to replace or substitute the State as the prosecuting agency.

37. He submits that there is no mandate in law obliging the Criminal Courts to issue notice to the complainant/victim at a pre-trial stage. In support, he places reliance on the judgment of this Court in ***Vivek Kumar Gaurav v. Union of India***, Neutral Citation No.2024:DHC:895-DB.



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38. Placing reliance on the judgment of this Court in ***Mahender Singh v. High Court of Delhi & Anr.***, Neutral Citation No.2008:DHC:75-DB, he submits that revision is not a right nor is it a continuation of trial or appeal; it is only a step in the aid of invoking power of superintendence and for correcting any irregularity. Placing reliance on the judgment of the High Court of Sikkim in ***Tshering Wangchuk Bhutia & Ors. v. Naksingh Bhutia & Ors.*** 1983 SCC OnLine Sikk 7, he submits that a revision also does not abate on the death of a party nor can it be dismissed in default. Placing reliance on the judgment of this Court in ***Rajender Kumar Jain v. State & Ors.***, 1978 Cr.L.J. NOC 132 (Delhi), he submits that the revisional power of the Court can be exercised irrespective of the fact whether the matter has been brought to the notice of the Court by an aggrieved person or by anyone else. He submits that a private party has no locus in the proceedings in a State Case.

39. He submits that the power of revision under Section 397 of the Cr.P.C. is supervisory and correctional in nature, where, in terms of Section 403 of the Cr.P.C., no party has a right of audience. He submits that, therefore, the petitioner does not have the *locus standi* to be impleaded as a party in the revision petition, and, in terms of Section 24(8) of the Cr.P.C., it is only the Public Prosecutor who has the statutory right to conduct the prosecution in a State case. He submits that the learned counsel for the complainant can only assist the Public Prosecutor. In support, he places reliance on the judgments of the Supreme Court in ***Shiv Kumar*** (supra); ***A.K. Subbaiah & Ors v. State of Karnataka & Ors.*** 1987 (4) SCC 557 and in ***High Court of***



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Hyderabad v. Mahabunisa Begum & Ors., (2019) 16 SCC 327; of this Court in *L.K. Jain & Anr. v. State* 2000 (55) DRJ 836 and in *Santosh Kumar Bagla v. Government of NCT of Delhi* (Judgment dated 20.05.2009 in CrI.M.C. 8472/2006); and of the Karnataka High Court in *Kerala Transport Co. v. D.S. Soma Shekar & Ors.* 1981 SCC OnLine Kar 314.

40. Placing reliance on the judgment of the High Court of Rajasthan in *Pooja Gurjar & Ors. v. State of Rajasthan*, 2023 SCC OnLine Raj 4210, he submits that the Public Prosecutors are appointed to conduct prosecution in terms of Section 24(8) of the Cr.P.C., and counsel for the victim/complainant may only assist the learned Public Prosecutor, that too, with the permission of Court. He submits that in the said judgment, the Court, while taking into consideration the law laid down by the Supreme Court in *Jagjeet Singh* (supra), held that victim/complainant cannot be impleaded as a necessary party, but can only assist the learned Public Prosecutor.

41. He submits that the right of a victim to be heard at appropriate stages was recognized and included in the Cr.P.C. by way of the amendments in the years 2005 and 2009, for example, in case of provisions for appeal under the Code. He submits that, however, the Legislature, in its wisdom, has consciously not added such right in all the provisions of the Code, such as, Sections 397, 399, 401, 301, and 302 of the Cr.P.C., and the same could have easily been done by way of the said or a new amendment to that effect.

42. Placing reliance on the judgment of the Supreme Court in *Thakur Ram v. State of Bihar*, 1965 SCC OnLine SC 14, he submits



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that a private party has no locus in criminal cases, as the party, who is treated as the aggrieved party, is the State. He also places reliance on the judgment of the Supreme Court in ***Dhariwal Industries Ltd. v. Kishore Wadhwani*** (2016) 10 SCC 378, to submit that the prosecution under a sessions case can be conducted only by the learned Public Prosecutor.

43. Placing reliance on the judgment of the Supreme Court in ***Janata Dal v. H.S. Chowdhary*** (1992) 4 SCC 305, he submits that strict rule of *locus standi* is applicable to private litigation, unlike a Public Interest Litigation, as in a Public Interest Litigation, the purpose is to ensure observance of the provisions of the Constitution and to advance the cause of the community or disadvantaged groups, which is not the case in a private litigation.

44. He submits that the entire case of the petitioner hinges around the judgment of the Supreme Court in ***Jagjeet Singh*** (supra). He submits that, however, the said judgment is not applicable to the facts of the present case and will not come to the aid of the petitioner herein. He submits that the Supreme Court in the said case was only deciding the issue as to whether the 'Victim' has the right to be heard by the Court while deciding the question of grant of Bail in an application preferred by the accused. He submits that in ***Jagjeet Singh*** (supra), it has been held by the Supreme Court that a 'Complainant' is not necessarily a 'Victim' in a case, as an informant can also be the complainant in a given case. He submits that, therefore, the petitioner, merely being the complainant, cannot also be considered to be the 'Victim' of the alleged crime. He submits that the observation of the



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Supreme Court relied upon by the petitioner is merely '*obiter dicta*' and cannot be considered to be '*ratio decidendi*' of the said judgment making it a binding precedent. He submits that the *obiter dicta* is not binding upon the Courts. In support, he places reliance on the judgment of the Supreme Court in ***Laxmi Devi v. State of Bihar & Ors.*** (2015) 10 SCC 241; and of this Court in ***Amarjeet Sharma v. Serious Fraud Investigation Office*** Neutral Citation No.2022:DHC:4629.

ANALYSIS & FINDINGS:

45. From the above submissions, the question to be decided by this Court is whether in the revision petition filed by the accused challenging the Order passed by the learned Magistrate refusing to discharge the said accused, the victim/complainant can, as a matter of right, seek impleadment, or only has a right to be heard, or only has a right to assist the Public Prosecutor?

46. Before proceeding further, what is relevant to note herein is that in a case arising out of a Revision Petition between the same parties, a Coordinate Bench of this Court in ***Vipul Gupta*** (supra), had answered the above question by holding that the case being a State Prosecution, at the highest, the complaint/victim can only be a witness to the proceedings and can participate through the Public Prosecutor, but cannot be impleaded as a party to the revision petition. It held that if the complainant/victim is to be allowed to participate in the proceedings before the learned Sessions Court, it shall change the entire nature of the proceedings from criminal to civil and shall



hamper independence of the prosecution. The Court held that the complainant/victim can, at best, assist the prosecution, however, the Public Prosecutor in such a case has to make an independent call. This Court, therefore, set aside the order of the Revisional Court which had directed the petitioner herein to be impleaded as a party to the revision petition filed by the respondent no. 2 herein.

47. The learned counsel for the petitioner submits that the said judgment would no longer be a good law in view of the subsequent judgment of the Supreme Court in **Jagjeet Singh** (supra). Relying upon the said judgment, he submits that the victim/complainant has a right to participate and to be heard in the Revision Petition, therefore, also has a right to be impleaded in the same.

48. To appreciate the above submission, certain provisions of the Cr.P.C. would need to be referred.

49. Section 225 of the Cr.P.C. states that in every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

50. Sub-Section (8) of Section 24 of the Cr. P.C. provides that the Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an Advocate for not less than 10 years, as a Special Public Prosecutor. It further states that the Court may permit the victim to engage an advocate of his choice '*to assist the prosecution*'.

51. In **Rekha Murakra** (supra), the term '*assist*' appearing in Section 24(8) of the Cr. P.C. and its ambit and scope, has been explained by the Supreme Court as under:



“11.1. The use of the term “assist” in the proviso to Section 24(8) is crucial, and implies that the victim's counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to CrPC had used the words “coordinate with the prosecution”. However, a change was later proposed and in the finally adopted version, the words “coordinate with” were substituted by “assist”. This change is reflective of an intention to only assign a supportive role to the victim's counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim's counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Sections 225 and 301(2), permitting such a free hand would go against the scheme envisaged under CrPC.

11.2. In some instances, such a wide array of functions may also have adverse consequences on the fairness of a trial. For instance, there may be a case where the Public Prosecutor may make a strategic call to examine some witnesses and leave out others. If the victim's counsel insists upon examining any of the left-out witnesses, it is possible that the evidence so brought forth may weaken the prosecution case. If given a free hand, in some instances, the trial may even end up becoming a vindictive battle between the victim's counsel and the accused, which may further impact the safeguards put in place for the accused in criminal trials. These lapses may be aggravated by a lack of advocacy experience on the part of the victim's counsel. In contrast, such dangers would not arise in the case of a



Public Prosecutor, who is required to have considerable experience in the practice of law, and act as an independent officer of the court. Thus, it is important to appreciate why the role of a victim's counsel is made subject to the instructions of the Public Prosecutor, who occupies a prime position by virtue of the increased responsibilities shouldered by him with respect to the conduct of a criminal trial.

11.3. *At the same time, the realities of criminal prosecutions, as they are conducted today, cannot be ignored. There is no denying that Public Prosecutors are often overworked. In certain places, there may be a single Public Prosecutor conducting trials in over two-three courts. Thus, the possibility of them missing out on certain aspects of the case cannot be ignored or discounted. A victim-centric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. To this extent, we agree with the submission made by the learned Senior Counsel for the appellant that the introduction of the proviso to Section 24(8) acts as a safety valve, inasmuch as the victim's counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the proviso to Section 372 CrPC is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim's counsel while assisting the prosecution. However, while doing so, the balance inherent in the scheme of CrPC should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted.*

11.4. *In this regard, given that the modalities of each case are different, we find that the extent of assistance and the manner of giving it would depend on the facts and circumstances*



of each case. Though we cannot detail and discuss all possible scenarios that may arise during a criminal prosecution, we find that a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in Section 301(2), the private party's pleader is subject to the directions of the Public Prosecutor. In our considered opinion, the same principle should apply to the victim's counsel under the proviso to Section 24(8), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of CrPC, but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.

***11.5.** However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 CrPC or Section 165 of the Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in *Uma Saha v. State of Tripura**



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2014 SCC OnLine Tri 859 that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the court or the prosecution, but not putting them by himself."

52. Section 301 of the Cr. P.C. states that while a Public Prosecutor or Assistant Public Prosecutor, being the in-charge of a case, may appear and plead without any written authority before any Court in which that case is under inquiry, trial, or appeal, if in such case any private person instructs a pleader to prosecute any person in the Court, the learned Public Prosecutor or Assistant Public Prosecutor in-charge of the case shall conduct the prosecution, and the said pleader shall act therein, under the directions of the learned Public Prosecutor or Assistant Public Prosecutor and, with the permission of the Court, may submit the written arguments after the evidence is closed in the case.

53. Section 302 of the Cr.P.C. further states that any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than, *inter alia*, Public Prosecutor or Assistant Public Prosecutor, therefore, for the victim/complainant to prosecute the case, special permission is required to be obtained from the Magistrate.

54. Sections 301 and 302 of the Cr.P.C. are reproduced herein under:

"301. Appearance by Public Prosecutors.—
(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.



(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.

302. Permission to conduct prosecution.—*(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than 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.*

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

55. The above provisions highlight the importance of a Public Prosecutor in the conduct of the trial. The same has also been recognized by the Supreme Court in **Shiv Kumar** (supra), by observing as under:

“13. From the scheme of the Code the legislative intention is manifestly clear that prosecution in a sessions court cannot be conducted by any one other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a Sessions Court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public



Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooked it, Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge. A private counsel, if allowed free hand to conduct prosecution would focus on bringing the case to conviction even if it is not a fit case to be so convicted. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor.

14. It is not merely an overall supervision which the Public Prosecutor is expected to perform in such cases when a privately engaged counsel is permitted to act on his behalf. The role which a private counsel in such a situation can play is, perhaps, comparable with that of a junior advocate conducting the case of his senior in a court. The private counsel is to act on behalf of the Public Prosecutor albeit the fact he is engaged in the case by a private party. If the role of the Public Prosecutor is allowed to shrink to a mere supervisory role the trial would become a combat between the private party and the accused which would render the legislative mandate in Section 225 of the Code a dead letter."

56. In **Rekha Murarka** (supra), the Supreme Court again emphasized on the unique and important position that the Public Prosecutor occupies in the Criminal Justice System by observing as under:



“7. In our criminal justice system, the Public Prosecutor occupies a position of great importance. Given that crimes are treated as a wrong against the society as a whole, his role in the administration of justice is crucial, as he is not just a representative of the aggrieved person, but that of the State at large. Though he is appointed by the Government, he is not a servant of the Government or the investigating agency. He is an officer of the court and his primary duty is to assist the court in arriving at the truth by putting forth all the relevant material on behalf of the prosecution. While discharging these duties, he must act in a manner that is fair to the court, to the investigating agencies, as well to the accused. This means that in instances where he finds material indicating that the accused legitimately deserves a benefit during the trial, he must not conceal it. The space carved out for the Public Prosecutor is clearly that of an independent officer who secures the cause of justice and fair play in a criminal trial.

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9. From a reading of these provisions, it is clear that a Public Prosecutor is entrusted with the responsibility of conducting the prosecution of a case. That this is a crucial role is evident from conditions such as in Section 24(7), which stipulates a minimum legal experience of seven years for a person to be eligible to be a Public Prosecutor. It is further clear from a joint reading of Section 301 and the proviso to Section 24(8) that the two provisions are mutually complementary. There is no bar on the victim engaging a private counsel to assist the prosecution, subject to the permission of the court.”

57. From the above, it would be evident that the learned Public Prosecutor performs an extremely important function in the dispensation of justice by the Courts in our Criminal Justice System.



The learned Public Prosecutor is to act as an Officer of the Court and not merely as the mouthpiece of the investigating agency. The learned Public Prosecutor represents the interests of the society at large and in the dispensation of such function, he plays a pivotal role as a central figure to guide the Court on a proper course of action in the given facts of a particular case to ensure that the justice is done.

58. The Supreme Court, however, without undermining the special position that the learned Public Prosecutor enjoys in the conduct of the trial in a State case, has also highlighted that due to being overburdened, sometimes the Public Prosecutors may overlook some important aspect of the case. This may be even more so where the trial involves highly complex matters of science, commerce, or accounts. In such cases, the presence and assistance from the victim/complainant may also play a very crucial part in ensuring that justice is done and the trial does not suffer due to the inexperience of the Public Prosecutor or simply because the Public Prosecutor is unable to understand the nuances of the case.

59. In addition, the Supreme Court has further repeatedly highlighted that when a victim wishes to be heard in a criminal proceeding which seeks the end/culmination of the criminal trial against the accused, it would be a denial of justice to the victim if he is foreclosed from being heard, even on a request in this regard being made by the victim.

60. A victim, in a criminal prosecution, sometimes has no choice but to invoke the State machinery to obtain justice and to bring the accused before law. In such cases, the other remedy like a Complaint



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under Section 200 of the Cr.P.C., where the victim controls the criminal proceedings, or a civil remedy, may not, in fact, be a proper remedy at all. Take, for example, in a case of rape, the victim has no remedy but to invoke the State Prosecution Machinery to obtain justice and bring the accused to meet his punishment. In such a case, the victim cannot be told that now that you have invoked the State Machinery, you have no interest left in the case or its outcome and, therefore, even if you wish to be heard, you shall not be allowed to do so. The victim, in such a case, has an equal interest to ensure to see that the accused does not escape the rigours of law only because the case was not properly prosecuted.

61. In ***J.K. International*** (supra), the Supreme Court emphasized the above principle by observing as under:

“8. But the situation here is different, as the accused approached the High Court for quashing the criminal proceedings initiated by the appellant. It may not be that the complainant should have been made a party by the accused himself in the petition for quashing the criminal proceedings, as the accused has no such obligation when the case was charge-sheeted by the police. It is predominantly the concern of the State to continue the prosecution. But when the complainant wishes to be heard when the criminal proceedings are sought to be quashed, it would be a negation of justice to him if he is foreclosed from being heard even after he makes a request to the court in that behalf. What is the advantage of the court in telling him that he would not be heard at all even at the risk of the criminal proceedings initiated by him being quashed. It is no solace to him to be told that if the criminal



proceedings are quashed he may have the right to challenge it before the higher forums.

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 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's 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 Magistrate's 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 anyone 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 court 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.

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15. *In the above view of the matter learned Single Judge has done wrong to the appellant when he closed the door of the High Court before him by saying that the High Court is going to consider whether the criminal proceedings initiated at his behest should be quashed completely and that the complainant would not be heard at all even if he wants to be heard.*

16. *We, therefore, allow this appeal and set aside the impugned order. The petition filed by the respondents for quashing the criminal proceedings can now be disposed of by the*



High Court after affording a reasonable opportunity to this appellant also to be heard in the matter.”

62. In fact, in the Cr.P.C. itself, amendments have been made to give a *locus* to the complainant/victim to participate at different stages of the criminal proceedings. Reference in this regard can be made to the proviso to Section 372 of the Cr.P.C., which is reproduced herein below:

“372. No appeal to lie unless otherwise provided.—

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Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

63. Reference can also be made to Section 439 (1A) of the Cr.P.C., which is reproduced herein below:

“439. Special powers of High Court or Court of Session regarding bail.—

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(1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section DB of the Indian Penal Code (45 of 1860).”

64. Similar provisions have also been made in various other Criminal Statutes. Reference in this regard can also be made to Sub-Sections 3, 4, and 5 of Section 15A of the Scheduled Castes and



Scheduled Tribes (Prevention of Atrocities) Act, 1989, which are reproduced herein below:

“15A. Rights of victims and witnesses.—

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(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

(4) A victim or his dependent shall have the right to apply to the Special Court or the Exclusive Special Court, as the case may be, to summon parties for production of all documents or material. witnesses or examine the persons present.

(5) A victim or his dependent shall be entitled to be heard at any proceeding under this Act in respect of bail discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and file written submission on conviction, acquittal or sentencing.”

65. This now brings me to the bedrock of the arguments of the learned counsel for the petitioner, that is, the application of the judgment of the Supreme Court in ***Jagjeet Singh*** (supra) in the facts of the present case.

66. In the said case, the Supreme Court was considering a challenge to an order passed by the High Court enlarging the accused therein on Bail. It was *inter alia* argued by the complainant/appellant in the said case that during the course of the online proceedings before the High Court, the counsel for the complainant/victims/appellant was disconnected and was not heard by the High Court. The Supreme



Court, answering the question as to whether a ‘victim’ as defined under Section 2(wa) of the Cr.P.C is entitled to be heard at the stage of a bail application being filed by the accused, observed that the jurisprudence with respect to the right of the victim to be heard and to participate in criminal proceedings has begun to evolve positively. It was observed that the recent amendments to the Cr.P.C. have recognized the victim’s rights in the Indian Criminal Justice System and, therefore, the rights of a victim cannot be construed restrictively; are totally independent, unbridled, and not accessory or auxiliary to those of the State under the Cr.P.C.. The presence of the State in the criminal proceedings, therefore, does not tantamount to according a hearing to the ‘victim’ of a crime. The Supreme Court held 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.

24. The above stated enunciations are not to be conflated with certain statutory provisions, such as those present in the Special Acts like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where



there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that:

24.1. First, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.

24.2. Second, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”

67. In view of the above, it can safely be concluded that the law has developed enough to a stage where the right of the victim to be heard in a criminal proceeding cannot be denied. If the victim wishes to participate in the criminal proceedings and to be heard, the doors of the court for a hearing cannot be shut to the victim. A victim has an equivalent right to see that justice is done and the accused is brought to book and to face his conviction and sentence. However, the Court shall regulate such hearing on a case to case basis and not allow the victim to hijack the trial and convert it into a battle to settle personal scores.

68. The learned counsel for the petitioner submits that affording a right of a fair and effective hearing would include and encompass



within itself a right to be impleaded in a Revision Petition filed by the accused which challenges an Order refusing to discharge the said accused in the criminal trial. To answer the said question, Section 397 of the Cr.P.C. (revisional power of the Session court), Section 399 of the Cr.P.C. (Sessions Judge's Power of Revision), Section 401 of the Cr. P.C. (revisional power of the High Court), and Section 403 of the Cr. P.C. (power of the Court to grant hearing in revision petition) need to be considered. They are reproduced herein below:

“397. Calling for records to exercise powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the



High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

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399. Sessions Judge's powers of revision.—

(1) 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.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

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401. High Court's powers of revision.—*(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.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

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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.”

69. The power of revision is not to be confused with an appellate jurisdiction. In **Rajender Kumar Jain** (supra), this Court emphasized that the revisional power can be exercised for meeting the ends of the justice, irrespective of the fact whether the matter has been brought to the notice of the Court by aggrieved person or by anyone else. The Sessions Judge and/or the High Court has unfettered and plenary



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powers to revise any orders of a Court Subordinate to it, provided ends of justice so demand.

70. In ***Mahender Singh*** (supra), this Court held that Section 397 of the Cr.P.C. does not confer any right upon a person to seek revision. It was observed that revision is not a right but is only a procedural facility afforded to a party, whereas appeal is a statutory right conferred upon a party. It was emphasized that the revisional powers are vested in the Court to see that justice is done in accordance with the recognized rules of criminal jurisdiction and that subordinate criminal Courts do not exceed their jurisdiction or abuse their powers vested in them by the Code. It does not create any right in the litigants. It is for this reason, that in ***Madan Lal Kapoor v. Rajiv Thapa***, (2007) 7 SCC 623, the Supreme Court has held that a criminal revision cannot be dismissed in default. A criminal revision shall also not abate on the death of the petitioner [Refer: ***Tshering Wangchuk Bhutia*** (supra)].

71. Keeping in view the above, it is to be considered whether a right to be heard given to a victim/complainant in a State case can be uplifted to a right to be impleaded in a criminal revision, if the complainant/victim applies for the same. In my opinion, the answer has to be in the negative.

72. Section 403 of the Cr. P.C. states that in a criminal revision, no party has a right to be heard either personally or through a pleader, however, the Revisional Court may, if it thinks fit, hear any party either personally or through a pleader. At the same time, Sub-Section (2) of Section 401 of the Cr.P.C. states that no order under the exercise



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of revisional jurisdiction 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 the pleader in his own defence. Though this Court in **Vipul Gupta** (supra) held that “*other person*” mentioned in Section 401(2) of the Cr.P.C. would not include the victim, this may no longer hold good, especially in light of the subsequent judgment of the Supreme Court in **Jagjit Singh** (supra). Either way, the right is one of being heard. Hearing a party does not necessarily involve the impleadment of such a party. As noted hereinabove, the right of the victim to participate in the trial and proceedings emanating therefrom, though recognized and is of importance, however, is still not of position where the victim replaces the Public Prosecutor. The right would remain subordinate to that of the Public Prosecutor and, therefore, where the victim applies for a hearing in a Revision Petition, while the victim must be heard, there is no mandate in law to implead the victim as a party.

73. Keeping in view the above principles of law, derived from the provisions of the Cr.P.C. and precedents, it must be held that while the victim/complainant has a right to be heard in the revision proceedings, such right does not upscale itself to a right to be impleaded in the said criminal revision. The Court while affording a right to be heard to a complainant/victim, shall regulate the same depending on the facts and circumstances of each case. The Court should keep in mind that the criminal prosecution does not turn into a battle between the two private warring parties. However, at the same time, the Court should also keep in mind that it is eventually the victim who has suffered and



has knocked at the doors of Criminal Justice System to seek justice against the alleged crime committed against it. Therefore, a balance has to be struck between the duty/responsibility of the State to conduct the criminal prosecution on behalf of the society as a whole, and the right of the victim/complainant to seek justice for the wrong done to it. In achieving this balance, though the victim/complainant may be heard, however, would not have a right to be impleaded, and such hearing shall be regulated by the Court depending on the facts and circumstances of each case.

74. In ***Saleem*** (supra), a Coordinate Bench of this Court, upon considering the judgment of this Court in ***Jagjeet Singh*** (supra), has held as under:

“25. It must be noticed that the mandate of Jagjeet Singh (supra) is that the victim has unbridled participatory rights in criminal proceedings, which is not to say that the victim must replace or substitute the State as the prosecuting agency; nor that the victim must be placed as an impleaded party to the proceedings so as to make the victim answerable in all aspects.

26. Furthermore, notice must also be taken of the fact that section 439(1A) Cr.P.C. requires the court to hear a victim at the stage of considering bail petitions and other similar matters; and nowhere does that provision require that the victim be made a party to such proceedings.

27. The essential tenet is that a criminal offence takes the colour of an affront to the society as a whole, for which the offender may face very serious consequences, including prison terms or even the capital sentence. This is why, the State machinery, including the police and the public prosecutor, are engaged



to investigate and prosecute criminal offenders; and it is the public prosecutor, who is responsible for or in-charge of the case. Through the public prosecutor, the State calls witnesses, contests and argues the matter, and may even seek withdrawal of proceedings against an accused. 28. The merit in putting the State in-charge of prosecuting criminal offences is inter-alia that the State being distanced from the actual commission of the offence, is presumed to be impartial towards discovery of the truth in relation to the commission of the offence and of the perpetrator thereof; for which reason, even if the victim turns hostile in a case and supports the innocence of the accused, the prosecution may yet be continued at the hands of the State and the court may yet convict the accused. Indeed, the victim of an offence may thirst for conviction, for which reason the State, through the Public Prosecutor is expected to be fair, present the case with detachment, without harbouring any anxiety to secure a conviction by any means. 29. The role of the victim, even on being afforded the right to be heard, however must vary with the context and the stage of criminal proceedings. In relation to bail proceedings for e.g., the victim may assist the court in clarifying relevant facts, such as any threats received by the victim or other witnesses; or the possibility of evidence tampering; or even flight risk. However, the victim would have no role in determining, say, the necessity of custodial interrogation, which would be the job of the investigating agency. 30. To reiterate, the right to be represented and be heard is distinct from the right or the obligation to be a party to criminal proceedings.

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33. Upon a conspectus of the foregoing, this court is persuaded to draw the following conclusions, which it is made clear, are



restricted to criminal matters relating to or arising from or concerning sexual offences:

33.1. There is no requirement in law to implead the victim, that is to say, to make the victim a party, to any criminal proceedings, whether instituted by the State or by the accused;

33.2. In accordance with the mandate of the Supreme Court in Jagjit Singh (supra), a victim now has unbridled participatory rights in all criminal proceedings in relation to which the person is a victim, but that in itself is no reason to implead a victim as a party to any such proceedings, unless otherwise specifically so provided in the statute; Section 439(1A) Cr.P.C. mandates that a victim be heard in proceedings relating to bail, without however requiring that the victim be impleaded as a party to bail petitions;

33.3. In light of the decision of the Supreme Court in Jagjit Singh (supra), section 439(1A) Cr.P.C. must now be expanded to include the victim's right to be heard even in petitions where an accused seeks anticipatory bail; a convict seeks suspension of sentence, parole, furlough, or other such interim relief;

33.4. To obviate any ambiguity, though section 439(1A) Cr.P.C. makes the "presence of the informant" obligatory at the time of hearing, what is clearly mandated thereby is the right of the victim, whether through the informant or other authorised representative, to be effectively heard in the matter. If necessary, legal-aid counsel may be appointed to assist in representing the victim; and the mere ornamental presence of the victim, or their representative, without affording them



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an effective right of hearing, would not suffice.”

75. A Division Bench of this Court in **Vivek Kumar Gaurav** (supra), in a Public Interest Litigation seeking a direction to all District Courts/Police Stations to supply a copy of Charge-sheet/Police Report/Final Report to the complainant/victim free of cost, and for all District Courts to issue notice to complainant/victim at the time of taking cognizance so as to enable them to exercise their right to be heard and participate in the pre-trial criminal proceedings, after taking note of the judgment of the Supreme Court in **Jagjeet Singh** (supra), has held that there is no mandate in the statute obligating a Criminal Court to issue notice to the complainant/victim at the pre-trial stage, however, if a victim/complainant approaches the Criminal Court for hearing during cognizance and pre-trial stage, the Court is bound to hear the victim. The Court held as under:

*“10. With respect to the right of the complainant/victim to be heard at the time of taking cognizance and in pre-trial criminal proceedings has already been recognized by Supreme Court of India in **Jagjeet Singh v. Ashish Mishra** (supra). In the said judgment, the Supreme Court of India has already held that wherever the victim comes forward to participate in the criminal proceedings, he/she will be accorded an opportunity of a fair and effective hearing. Therefore, if a victim approaches the Criminal Court for hearing during cognizance and pre-trial, the said Court is bound to hear the victim in view of the aforesaid judgment of the Supreme Court of India. However, the said judgment itself records that the said opportunity of hearing is to be granted to the victims who come forward to participate in the criminal proceeding. 11.*



*There is no mandate in the statute obliging the Criminal Court to issue notice to the complainant/victim at pre-trial stage. We are unable to accept the suggestion of the Petitioner that it should be made mandatory for the Criminal Court to issue a notice to the complainant/victim at every stage of the pre-trial and trial in criminal proceedings. In the opinion of this Court, such a direction is likely to result in avoidable and undesirable delays in trials and is likely to work against the objective of expeditious trials. The suggestion of the Petitioner if accepted would act as 'a treatment worse than the disease'. Thus, in view of the judgment of the Supreme Court in **Jagjeet Singh v. Ashish Mishra** (supra) and the amendments made to CrPC by the 2008 Amendment Act, there are sufficient rights given to the victim/complainant to effectively participate in pre-trial and trial proceedings if he/she so elects. This Court therefore, finds no ground for issuing directions as sought in prayer (b) of the writ."*

76. A Division Bench of the Rajasthan High Court in **Pooja Gurjar** (supra), after considering the judgment of the Supreme Court in **Jagjeet Singh** (supra), has held that the 'unbridled participatory rights' mentioned in the said judgment do not mean that the victim/complainant must replace or substitute the State as the prosecuting agency; nor that the victim/complainant must be impleaded as a party to the proceedings so as to make the victim/complainant answerable in all aspects. The Court has held as under:

"21. Thus, we are of the considered view that the mandate of Jagjeet Singh v. Ashish Mishra & Monu (supra) that the victim has unbridled participatory rights in criminal proceedings, does not mean that the victim must replace or



substitute the State as the prosecuting agency; nor that the victim must be impleaded as a party to the proceedings so as to make the victim answerable in all aspects.

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23. None of the members of the Bar have supported the view taken by the learned Single Judge in Nitoo Singh @ Nitu Singh v. State (supra) and have vehemently opposed the said order whereby direction has been given for impleading victim as a party-respondent. The right of the victim as well as the accused person shall be rightly balanced and any inclination to either of the parties would not subserve the fundamental principle of fair trial, therefore, it shall be kept well within the minds of the Legislature as well as the judicial discipline that while granting any right to the victim, the right of the accused shall also be protected at the very first instance. We are of the clear view that neither the statute directs impleadment of victim as a party-respondent nor the judgment of Jagjeet Singh v. Ashish Mishra & Monu (supra) directs impleadment of victim as a necessary party. Jagjeet Singh case only provides that the victim has a vested right to be heard at every stage of proceedings. Therefore, we are of the considered view that the victim is not a necessary party and is not required to be impleaded as party-respondent in bail applications under Sections 437, 438 or 439 of Cr.P.C. The reference is accordingly answered in negative.”

77. In **Prakash C. Sheth** (supra), the Bombay High Court was again confronted with an Order passed by the Revisional Court therein holding that the First Informant has a right to participate in the Revision Petition, but his role is limited and he should assist the Assistant Public Prosecutor in defending the Revision Petition. The



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Court held that the First Informant has a right to be heard in the Revision Petition.

78. The learned counsel for the petitioner has cited various other Orders whereby different Courts have either impleaded or granted hearing to the victim/complainant. I do not deem it appropriate to discuss each of these Orders, some of them being only while issuing notice at the initial stages of the proceedings itself. Most of them cannot even be said to be precedents on the issue that this Court has to decide in the present case.

79. Coming back to the facts of the present case, the Revision Petitions have been filed by the private respondents herein Impugning the Orders dated 07.03.2022 and 10.12.2021 passed by the learned Trial Court framing charges against the said respondents. The learned ASJ in the Impugned Order, placing reliance on the earlier judgment of this Court between the same parties in *Vipul Gupta* (supra), has held that the petitioner cannot be impleaded as a party in the Revision Petitions, however, shall be at liberty to assist the Court through the medium of the learned APP therein or plead its case through the learned APP therein.

80. In my opinion, for the conclusion that I have reached hereinabove, the Impugned Order, insofar as it holds that the petitioner cannot be impleaded as a party to the Revision Petitions, has to be sustained. However, insofar as it restricts the right of the petitioner only to assisting the Court through the medium of the learned APP therein or to plead its case only through the learned APP therein, cannot be upheld. As noted hereinabove, the petitioner, being the



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alleged victim, has an independent right to be heard in the Revision Petitions pending adjudication before the learned ASJ, especially as they seek the closure/culmination of the criminal proceedings against the accused/revisionist(s). Any order passed in favour of the accused/revisionist(s) in the Revision Petitions would, therefore, also prejudice the petitioner.

Conclusion & Directions:

81. In view of the above discussion, the Impugned Order is partially set aside. The learned ASJ shall afford a fair and reasonable opportunity of hearing to the petitioner in the above-mentioned Revision Petitions pending before it. The petitioner shall also be entitled to file written submissions in the said Revision Petitions.

82. With the above modifications in the Impugned Order, the present petition is disposed of. The pending application is also disposed of being rendered infructuous.

83. There shall be no order as to costs.

NAVIN CHAWLA, J

MAY 24, 2024/Arya/AS