



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 27 OF 2025

Shankar Genaji Wavalkar,
Age – 73 years, Occu. Pensioner,
R/o Mahatma Phule Nagar,
Dhanora Road, Beed,
Tq. & Dist. Beed.

... Petitioner

versus

The State of Maharashtra,
Through Ambejogai Police Station,
Tq. Ambejogai, Dist. Beed.

... Respondent

.....
Mr. A. M. Gaikwad, Advocate for the Appellant
Mr. S. A. Gaikwad, APP for the Respondent-State
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 14.11.2025

Pronounced on : 18.11.2025

JUDGMENT :

1. In the instant revision, revision petitioner questions both, order of learned Sessions Court dated 30.08.2024, rejecting prayers for discharge under Section 227 of Cr.P.C. and is also assailing the order of framing charge dated 06.10.2025.

2. **Facts in nutshell** are as under :

3. One FIR bearing no. 69 of 2021 came to be registered against revision petitioner and his family members at the instance of Prabhakar s/o Shubhan Potbhare for commission of offence under Section 306 r/w 34 of IPC by leveling accusations that, informant had three sons, namely, Rajabhau, Manojkumar and Sushilkumar. Manojkumar was married to one Sarika, i.e. original accused no.5 and they had two children. Since 5 to 6 months, Sarika had left the company of her husband Manojkumar and was residing at her maternal home. On 19.02.2021, Manojkumar was found to have committed suicide by hanging. At the time of inquest, chit was found on his person which was directed to accused no.5 Sarika (wife) conveying frustration due to insult caused by her Anna in 2016. It was further written that, person Shankar Genaji Wavalkar, i.e. present applicant, is fully responsible for his suicide. Police seized the said chit. At the instance of father of deceased Manojkumar, report came to be lodged at City Police Station, Ambajogai which was registered against accused nos. 1 to 5 for offence under Section 306 r/w 34 of IPC.

4. All the five accused preferred application Exhibit 21 under Section 227 of Cr.P.C. seeking discharge from above crime. After hearing counsel for the applicants-accused as well as learned APP for

the State, learned trial court was pleased to discharge accused nos. 2 to 5 from said offence and as such, application as regards to accused no.1, i.e. present revision petitioner, stood rejected vide order dated 30.08.2024.

5. Said Shankar has herein preferred Criminal Revision Application No. 27 of 2025 before this Court, challenging the order dated 30.08.2024. Learned APP waived notice on behalf of respondent-State and sought adjournment which was time and again granted.

6. Meanwhile, learned trial court was pleased to frame charge against the present revision petitioner and this made him pray for permission to amend the revision application and it was also accordingly allowed.

7. Mr. A. M. Gaikwad, learned counsel for revision petitioner initially pointed out the dates of filing revision challenging the order of trial court and also narrated the dates on which matter was adjourned and the reasons thereof. In the said context, he further submitted that prosecution had time and again sought adjournment and the same was granted, however, in spite of request application by the revision petitioner for adjournment before learned trial court on

the ground of matter to be *sub judice* here, learned trial court, in hurried manner, framed and explained charge after rejecting the application seeking adjournment. According to him, revision petitioner is not at fault and moreover, he has valuable right to question the rejection of discharge application. Therefore, for the current situation of recording of his plea, he cannot be faulted at and even his right to seek discharge, in such exceptional circumstances, does survive.

8. On merits, he pointed out that, deceased Manojkumar was married in the year 2012 to accused no.5 and admittedly, from the very report of father of deceased, it is abundantly clear that even since to 5 to 6 months prior to suicide by her husband, she was put with her parents. At the time of alleged suicide by her husband Manojkumar, she was miles away and as such, there was no inducement or abetment either by accused no.5 or any of the accused named in the report at the instance of Prabhakar.

Learned counsel took this Court through several rulings of the Hon'ble Apex Court as well as this Court and would submit that, even going by the face value of the contents appearing in the alleged chit, instance quoted therein is of 2016. That, even allegations of alleged

episode of 2020 regarding alleged beating to the deceased, was duly reported to police by filing FIR by deceased himself and even said episode was three months prior to the alleged suicide and cannot be said to have remote nexus also. That, allegations against present revision petitioner are moreover vague and non-specific, without clarifying as to how he was responsible for the suicide or alleged relations between husband and wife.

Consequently, according to him, when there is no proximity between alleged episodes narrated in the suicide note and the alleged suicide, he would strenuously submit that, like accused nos. 2 to 5, he too ought to have been discharged.

9. In support of maintainability of revision and entertainment of revision even post framing charge, he seeks reliance on the judgments of the Hon'ble Apex Court in *Sanjay Kumar Rai v. State of Uttar Pradesh and another*, reported in AIR 2021 SC 2351 and *Madhu Limaye v. State of Maharashtra*, reported in AIR 1978 SC 47 as well as judgment of this Court in the case of *Priya Sharan Maharaj alias Yadavendra Parashar and others v. State of Maharashtra*, reported in 1995 Cri.L.J. 3683.

10. The another submission of learned counsel for revisionist is that, learned trial court has not applied its judicious mind even while framing charge, which was expected of said court, and he would submit that, even after discharging remaining accused nos. 2 to 5, charge came to be framed and explained to the sole accused-revision petitioner, that too by employing “Common Intention” thereby invoking Section 34 of IPC and hence, it is his submission that, there is patent error on the part of learned trial court, who mechanically framed charge necessitating indulgence by invoking powers under Section 397 of Cr.P.C.

11. Learned APP, who answered the above revision on the strength of affidavit, refuted the submissions that prosecution is solely responsible for prolonging the matter due to which learned trial court proceeded to frame charge. According to him, revision petitioner had not put up anything in black and white before the learned trial court regarding revision being *sub judice* before this Court in spite of being called for, and therefore no fault can be attributed to the prosecution. He submitted that applicant is named in the suicide note and as such, there is material against him to face trial. According to him, as regards the role of applicant is concerned, it is crystallized. He emphatically submitted that furthermore, now accused/present

revision petitioner has already faced charge, which was explained to him and he has also answered the same and his plea being already recorded, resultantly he questions the very maintainability of present revision in the light of above supervening events of framing charge and recording plea.

12. Admittedly, here, revision petitioner has invoked provisions under Section 397 of Cr.P.C. Therefore, now, it is to be seen whether there is patent illegality or irregularity or even procedural irregularity resulting into miscarriage of justice at the hands of trial court and whether there is gross error, non compliance of provisions of law and finding to be based on no evidence, or material evidence to have been ignored or judicial discretion is exercised arbitrarily or perversely.

13. Undisputedly, after registration of crime, Exhibit 21 was pressed into service by all five accused including present revision petitioner, invoking powers under Section 227 of Cr.P.C and urging to seek discharge from offence of Section 306 IPC registered vide crime no. 69/2021 at Ambajogai City Police Station. Except that of present revision petitioner, who is shown as applicant no.1, prayers of accused nos. 2 to 5 seem to be granted by learned Additional Sessions

Judge and only application of present revision petitioner alone came to be rejected holding that, in the suicide note, deceased has attributed the suicide for alleged insult made by present applicant and he being solely responsible, there is *prima facie* evidence against him for proceeding for trial, and as such, it is necessary to give opportunity to the prosecution to adduce evidence against him.

Thus, partly allowing application of remaining accused, discharge application of present revision petitioner stood rejected by order dated 30.08.2024.

14. Revision has been preferred before this Court against above order and record shows that it was filed on 27.01.2025. Thereafter, on matter getting circulated on 03.02.2025, on said date learned APP waived notice and matter was posted on 24.02.2025. On said date, **learned APP sought time** and matter was posted on 18.03.2025. On said date, again **learned APP sought time** and matter came to be adjourned and kept on 07.04.2025 and thereafter, on 24.04.2025 and record shows that, due to paucity of time, matter was not taken up and finally adjourned and posted on 13.10.2025. On said date, again **learned APP sought time** and therefore, time was granted by way of last chance and matter was posted to 06.11.2025. Again on said date,

learned APP seems to have made submissions that his file was not traceable and thereby sought adjournment and matter came to be posted on 07.11.2025 and on such date, learned counsel for revision petitioner pointed out that, learned trial court, in spite of application for adjournment on the ground that matter is *sub judice*, has proceeded to frame the charge and record the plea. According to him, learned trial court was in a hurry to frame charge and both, oral as well as written requests for adjournment were turned down. It is his submission that, revision petitioner is not responsible for such stage and according to him, prosecution is solely responsible for repeated adjournments sought by APP, and he also sought leave to amend the revision and prayers.

15. On going through the record, this Court finds substance and force in the submissions advanced by learned counsel for revisionist that, since waiving of notice on 03.02.2025, prosecution seems to have repeatedly sought time to answer the revision. Finally on 06.11.2025, submissions were made that, file itself was not traceable and adjournment was sought and matter was kept on 07.11.2025. On said date, it was brought to the notice of this Court that learned trial court has already framed charge on 06.10.2025 itself.

16. Learned counsel for the revisionist very emphatically submitted that, as matter was *sub judice* before this Court, revision applicant had tendered application **Exhibit 39** seeking adjournment for framing charge, but on same day, his application has been turned down.

In the light of above submissions, record is perused. At Exhibit “E”, revision petitioner has placed on record application **Exhibit 39** moved in Sessions Case No. 60 of 2022 contending that revisionist has challenged the order of rejection of his application for discharge in the Hon’ble High Court and therefore prayed for adjournment i.e. to adjourn the case posted for framing charge. On above application, after putting remark as “APP to say”, following order has been passed :

“ORDER

Read application and say. Heard. The Advocate for accused submitted that he is ready to file his (own) affidavit regarding pendency of matter before the Hon’ble High Court. But accused did not file any document showing that matter is sub judice before Hon’ble High Court or stay is there. More so, by framing charge, no harm will be caused to the accused or cause prejudice to the accused in any way. Hence, adjournment application is rejected.”

17. Thus, as pointed out, here, it is clearly emerging that revision challenging rejection of application for discharge, which was pending and *sub judice* and in spite of a written application Exhibit 39, seeking adjournment on above count, said application has been rejected by learned trial court.

18. Again, **Exhibit 40** seems to have been moved by present revision petitioner before learned trial court on same day submitting that, adjournment application of the accused has been opposed by learned APP on the ground of want of documents showing pendency of the matter in the Hon'ble High Court in respect of challenging the order of rejection of application for discharge. That, at the time of hearing of the application for adjournment dated 06.10.2025, his Advocate Mr. B. R. Tidke had made oral submissions to file his own affidavit in respect of pendency of such matter in the Hon'ble High Court and he expressed readiness to produce the letter of learned Advocate for the accused in respect of pendency of the matter in the Hon'ble High Court today itself. That, however, the Hon'ble court was pleased to reject the application for adjournment dated 06.10.2025. That, as per oral submission of the Advocate for accused, accused is producing the affidavit of his Advocate Mr. B. R. Tidke, the letter of Advocate Mr. Anil M. Gaikwad and the online status of Criminal

Revision Application No. 27 of 2025 pending in the Hon'ble High Court and that, the next date in the matter is 13.10.2025 and that, notice of the revision has already been served on the respondent State. That, considering all these peculiar facts of the case, it is just and proper to adjourn the case for framing charge.

Said application seems to be under signature of both, present revision petitioner as well as his counsel representing him in the trial court. After obtaining say of the learned APP, following order has been passed on the said application :

“ORDER

Read application and say. Already this court has rejected adjournment application Exhibit 39 in the morning session by giving specific reasons. Then also the advocate for accused again filed present application for adjournment by attaching some screen shots and his affidavit and forcing this court to adjourn the matter. This court being criminal court, has no power to review its own order. Previous application with same contention has been rejected with reasons. Learned Advocate for the accused at any cost wants to get adjournment and restrain this court to frame charge, its amounting to interference in the judicial proceedings. Previous application is rejected. Present application is not maintainable. Hence rejected with penalty of Rs.500/-.”

The above order is passed on same day, i.e. 06.10.2025.

19. After rejecting applications Exhibits 39 and 40, learned trial court has proceeded to frame charge at Exhibit 41/C and copy of the same is also annexed with the revision and is marked at Exhibit "G".

Thus, what is emerging from above discussion is that, during pendency of revision application before this Court, questioning the order of refusal to discharge, learned trial court has rejected written applications for adjournment on the ground that matter is *sub judice* before this Court and moreover, has also proceeded to frame charge on the same day.

20. By umpteen judgments, scope of **Section 397 Cr.P.C.** has been time and again reiterated. Though there are catena of judgments, the landmark judgment of *Amit Kapoor v. Ramesh Chander and another* (2012) 9 SCC 460 is relied and the relevant observations therein are borrowed and quoted as under :

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case.

The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well - founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

21. In ***Sanjay Kumar Rai*** (supra) also, Hon'ble Apex Court has held that the orders framing charge or refusing discharge are neither interlocutory or final in nature and therefore are not affected by bar of Section 397 of Cr.P.C. In the said judgment itself, reference is also made to the case of ***Madhu Limaye*** (supra).

In view of the law laid down herein, controversy about maintainability of revision in instant case is thus put to rest and it is thus held by this Court that, revision is very much maintainable.

22. Learned counsel for revisionist would strenuously submit that his valuable right to seek discharge has been frustrated for no fault on his part.

23. In the case of ***Jarnail Singh v. State of Rajasthan***, reported in 1992 Cri.LJ 810, after referring to the case of ***V. C. Shukla v. State through C.B.I.*** 1980 Cr.LJ 690 as well as ***Madhu Limaye*** (supra), it has been observed as under:

“An order framing charge, is an order of moment. It deprives the liberty of a citizen and puts him to jeopardy of a trial. Such an order finally rejects the plea of the accused that he is entitled to discharge or that he is not liable to be

tried. Such an order concludes the enquiry and the pre-trial proceedings against the accused. The order framing charge takes away a very valuable right of the accused. Hence, an order framing charge is not interlocutory order within the meaning of S. 397(2) and such an order is amenable to the supervisory jurisdiction of the Court of Session as well as High Court under Section 397(1) Cr.P.C.”

24. In the light of above settled legal position, here admittedly, during pendency of revision for testing the legality and propriety of order of rejection of application for discharge, charge has been framed and as such, apparently, very valuable right of revisionist to seek discharge has been foreclosed. Above discussion clearly shows that in spite of pressing into service applications Exhibits 39 and 40 seeking adjournment on the ground that revision is *sub judice* before this Court , both such applications are unfortunately turned down by the learned trial court on one and the same day, and further, charge is also framed, thereby affecting revisionist's most valuable right to seek discharge. Moreover, surprisingly learned trial court went to the extent of observing that, “*by framing charge, no harm will be caused to accused or cause prejudice to accused in any way*”.

Thus, settled legal position about valuable right of accused to seek discharge has not been comprehended here by the learned trial court.

25. In the considered opinion of this Court, specific application seeking adjournment, quoting the reason, was put up before the court below and as such, the same ought to have been considered. Even learned trial court could have itself got verified from High Court website regarding pendency of the revision, but instead of doing so, applications for adjournment have been straightway rejected only on the count of failure to file affidavit, in spite of there being written application seeking adjournment. In the considered opinion of this Court, in the light of availability of written application specifying revision to be *sub judice*, accommodation ought to have been granted at least till revision is decided. There was no need to hurry and even frame charge on the same day. Resultantly, in the light of such peculiar and exceptional circumstances, no fault at all can be found on the part of the revision petitioner.

26. On the contrary, in view of the dates in the present Revision which are reflected from the record and reproduced in aforesaid paragraph, it is abundantly clear that, it is the prosecution who had

time and again borrowed time and had got the revision application adjourned and even at one point of time i.e. on 06.11.2025, submitted that file itself is missing and thereby sought adjournment and this Court had even considered the same by granting adjournment. Hence, such exceptionally peculiar facts necessitate testing the merits of the revision for discharge even though charge has been framed. Discretion has not been thus exercised judiciously.

27. Resultantly, now, this Court turns to the very merits of the revision.

Learned counsel for revision petitioner has pointed out that, accused no.5 was married to deceased Manojkumar, who was son of informant, in May 2012 and admittedly, they had two children. According to informant's own version, his daughter Sarika was residing with their children at her maternal place since 5 to 6 months. Such material shows that deceased Manojkumar was at his own place and in the company of his father informant, i.e. at Rukmai Nagar, Nagzari Area, Ambajogai, whereas accused no.5 was at Beed. Therefore, such material indicates that there was no occasion for revision petitioner to indulge in any act which would tantamount to inducement, abetment to commit suicide.

28. True it is that prosecution claims that a chit was found in the pocket of deceased Manojkumar and informant himself has narrated the contents of the said chit and its translated version is as under :

“Much daring is required for suicide Sara. But I have been very much frustrated due to my insult caused by your Anna in 2016. Shankar Genaji Wavalkar is solely responsible for my suicide. Properly maintain sons Sara.”

Thus, in instance of 2016, how revisionist is solely responsible so as to commit suicide in 2021 is not clarified.

29. In the FIR, dated 19.02.2021, informant has also reported that, on 06.11.2020, present revision petitioner (who is father-in-law of deceased Manojkumar), his wife of Parvatibai, Ravindra Wavalkar and Sujata Ravindra Wavalkar had beaten Manojkumar for not permitting Sarika to cohabit with him. Said incident apparently is of 06.11.2020 i.e. almost three and half months prior to alleged suicide and further, FIR itself shows that said incidence was also reported by deceased himself to the police.

30. Time and again, in umpteen judgments, Hon’ble Apex Court as well as this Court has dealt with key principles while discharging accused from charge of Section 306 IPC. It is reiterated that, apart

from inducement, direct instigation, active participation, there has to be *mens rea* also. The proximate trigger which led to suicide is also time and again clarified while dealing with above provision.

Few cases that could be named are, *Ramesh Kumar v. State of Chhattisgarh* (2001) 9 SCC 618, *S. S. Chheena v. Vijay Kumar Mahajan and Others* (2010) 12 SCC 190 as well as *M. Mohan v. The State represented by The Deputy Superintendent of Police* MANU/SC/0161/2011, wherein standard of “instigation” is elaborately dealt and discussed.

Even, recently in the case of *Abhinav Mohan Delkar v. State of Maharashtra and others*, MANU/SC/1103/2025 the Hon’ble Apex Court has reinforced “proximate trigger” doctrine emphasizing that there has to be close temporal and casual connection between the conduct of accused and the alleged suicide. Continuous harassment, without recent instigation, is held to be not sufficient to sustain the charge.

31. Considering the above incidents, i.e. of 2016 and 2020 respectively, and in absence of anything to show that there was any inducement, abetment or creation of such circumstances which impelled Manojkumar to end up his life, and also taking into

consideration that there is apparently no nexus or proximity between the alleged episodes of 2016 and 2020 and the alleged suicide of **19.01.2021**, along with other accused, who are discharged, even present applicant ought to have been discharged.

32. Learned trial court seems to have refused to the discharge accused primarily on the ground that there is chit carrying his name. However, informant has merely narrated contents of the alleged chit which itself clearly shows that, accused no.5 was at her maternal place, and miles away her deceased husband had allegedly hanged himself in his own house. Rather, since six months she was put up with her parents. No incident involving either husband or wife or even present revision petitioner is reflected in the chit to hold that, because of their conduct and act deceased decided to end up his life. Hence, in the considered opinion of this Court, even revision applicant had succeeded in making out a case for discharge.

33. Another reason which makes it imperative for this Court to interfere is that, though learned trial court had discharged accused nos. 2 to 5 and had rejected discharge application of sole revisionist, copy of the charge placed before this Court apparently shows that charge has been framed by invoking Section 34 IPC i.e. common intention.

Framing of charge is considered to be of great significance and is a serious judicial exercise. Courts framing charges are expected to be vigilant regarding the material leading to framing of charge. Nature of accusations and material in that regard is to be comprehended. It being sacrosanct function, Courts are expected to be vigilant. In short, it is a judicious exercise involving application of mind and not mechanical one.

In the known case of *V. C. Shukla* (supra), the very purpose of framing charge has been clarified. The purpose of framing charge is thus to give clear intimation to the accused regarding exact nature of accusations which is called upon to meet in the course of trial. The other purpose which is served by correctly framing charge is that, court is able to have a clear perception as to what is the nature of accusations and whether prosecution has material in that regard.

Apart from above Three Judge Bench ruling in the case of *V. C. Shukla*, the other important pronouncements are in the cases of *State of Maharashtra and Ors. Vs. Som Nath Thapa and Ors.* MANU/SC/0451/1996 and *Union of India (UOI) Vs. Prafulla Kumar Samal and Ors.* MANU/SC/0414/1978.

Here, as stated above, in spite of sole accused remaining, learned trial court has unfortunately also applied Section 34 IPC in the charge framed at Exhibit 41/C reflecting non application of mind.

For the more reason, this Court is more than convinced that, at the time of framing charge, when judicious application of mind was expected at the hands of trial court, it was not so. Therefore, learned counsel for revisionist was right in pointing out that even charge has not been framed properly and there is non application of mind.

34. Learned APP would try to submit that, now charge is already framed and as such, revision does not survive.

35. This Court, while exercising revisionary jurisdiction under Section 397 Cr.P.C., indisputably is also clothed with powers under Section 401 Cr.P.C. Law is fairly settled that High Court can even exercise *suo motu* revisionary powers to examine correctness, legality, propriety of an order and such powers can be used to prevent grave miscarriage of justice, abuse of process of law or even when there is failure of justice.

Thus, in the light of above situation, here, when it is brought to the notice of this Court that, during pendency of revision application challenging the legality of rejection of discharge application and when on merits also, the applicant had made out case for discharge, this Court decides to interfere in the impugned order.

36. To sum up, revisionist succeeds on both above counts, i.e. on the point of maintainability as well as on merits. Hence, the following order :

ORDER

- I. The Criminal Revision Application is allowed in terms of prayer clauses (B) and (B-1).
- II. The Criminal Revision Application is accordingly disposed off.

[ABHAY S. WAGHWASE, J.]

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