



Judgment

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

CRIMINAL APPEAL NO.59 OF 2025

Ravindra s/o Shaligramji Bhuyar,
aged about 50 years, occupation: regional
transport officer, r/o flat No.101,
Himalaya Galaxy-1,
near University Campus, Amravati Road,
Nagpur-440 033. **Appellant.**

:: VERSUS ::

1. State of Maharashtra,
through Police Station Officer,
Sitabuldi Police Station, Nagpur.

2. The State of Maharashtra,
through the Assistant Commissioner
of Police Sitabuldi Division, Nagpur City,
Nagpur.

3. "X", the informant
in FIR No.474/2023
registered at Police Station Sitabuldi,
Nagpur. **Respondents.**

Shri R.R.Vyas, Counsel for the Appellant.
Mrs.Ritu Sharma, Additional Public Prosecutor for the
Respondent Nos.1 & 2/State.
Shri Sameer Sonwane, Counsel Appointed for Respondent
No.2/Informant.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 06/03/2025

PRONOUNCED ON : 07/04/2025

JUDGMENT

1. By this appeal, the appellant (accused) has challenged order dated 12.12.2024 passed below Exh.1 by learned Special Judge, Nagpur (learned Judge below) in B.Summary Case No.1/2024, in connection with Crime No.474/2023 registered under Sections 354-A, 294, 509, and 506 of the IPC and 3(1)(r)(s), 3(2)(va), and 3(w) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, whereby the B-Summary Report is rejected.

2. The accused is the Government Officer working as the Regional Transport Officer. FIR was registered against him on the basis of report lodged by respondent No.3 (the informant) who is also a Regional Transport Officer

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alleging that the accused has outraged her modesty on various occasions being her superior officer knowing that she belongs to the Scheduled Caste. The allegation of the respondent No.3 is that the accused was transferred to the Regional Transport Officer at Nagpur and he used to taunt and comment her as to her looks and also was using obscene words. He used to sit in front of her hours together. The specific allegation levelled by her is that in December 2022, the accused called her in his chamber and shown her obscene photographs and also threatened her. On the basis of the said report, the police registered the crime.

3. After registration of the crime, the investigation officer has recorded various statements of the witnesses as to the incidents dated 12.4.2022, May 2022, December 2022, 17.12.2022, 19.5.2023, 10.1.2023 and so on. After the investigation, the investigating officer submitted B-

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Summary Report that no substance is found in the allegation during the investigation and, therefore B-Summary Report deserves to be granted.

4. Learned Judge below issued notice to the informant on the said report. The informant objected the B-Summary Report by filing protest application and after hearing both the sides, learned Judge below rejected B-Summary Report.

5. Being aggrieved and dissatisfied with the order impugned in the appeal, the accused preferred this appeal on the ground that during investigation it revealed to the investigating officer on the basis of various statements that no substance is found in the application. Learned Judge below has also not considered that various reports are filed against the informant as to her misconduct at various places. She was shown as accused in FIR No.238/2016

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registered at Barshi City Police Station, Solapur under Sections 409, 420, 465, 468, 471, 477, 120-B, 109, and 201 of the IPC. The another offence is registered vide Crime No.59/2016 at Anandngar Police Station, Usmanabad under Sections 409, 420, 465, 468, 471, 474, 477A, 120-B, 109, and 201 of the IPC and under Sections 7, 13(1)(d)(2) of the Prevention of Corruption Act, and Crime No.238/2023 registered at Ramtek Police Station, district Nagpur under Sections 7(a) and 12 of the Prevention of Corruption Act, Crime No.7/2024 registered at Bajaj Nagar Police Station, Nagpur under Section 307 and 3/25 of the Arms Act. In the Crime Nos.7/2024 and 59/2016, this court has not protected her by granting anticipatory bail. Learned Judge below before rejecting B-summary Report ought to have appreciated that the victim has set criminal law in motion with *mala fide* intention and no proper reasons are assigned by learned Judge

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below. In view of that, the order passed by learned Judge below deserves to be quashed and set aside.

6. Heard learned counsel Shri R.R.Vyas for the accused, learned Additional Public Prosecutor Mrs.Ritu Sharma for the State, and learned counsel Shri Sameer Sonwane for the the informant.

7. learned counsel for the accused submitted that it is imperative on the part of learned Judge below to assign reasons while rejecting the B-Summary Report. He invited my attention to impugned order and submitted that learned Judge below has only reproduced the B-Summary Report and rejected the same. No separate reasons are assigned and also has not taken into consideration that the accused is superior officer of the informant and various misconducts are reported to him and he should give a favourable report in her favour and to pressurize him as

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he was conducting enquiry against her, this false report is filed. No specific instances are narrated by the informant to substantiate her contentions. For these grounds itself, the appeal deserves to be allowed.

8. Learned Additional Public Prosecutor for the State supported the B-Summary Report and submitted that during investigation no substance is found and, therefore, the B-Summary Report is filed.

9. Learned counsel for the victim supported the order passed by learned Judge below and submitted that the statement of the victim itself is sufficient to attract the offence against the accused. Learned Judge below has rightly rejected the application by assigning the reasons. Learned Judge below is empowered to reject the B-Summary Report. In view of that, the appeal is devoid of merits and liable to be dismissed.

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10. In view of the above submissions, it is necessary to go through some relevant provisions of the Code of Criminal Procedure.

11. The provisions of Section 156(1) and (2) of the Code describes statutory powers are given to officer incharge of the police station to investigate cognizable offence case. The similar powers are also assigned to the authorized officer under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and for the said purpose the SDO is appointed as an authorized officer for the investigation. Sections 169, 170, and 173 of the Code requires to be read together.

12. Section 169 read with Section 170 of the Code shows that if, upon an investigation under the provisions of Chapter XII of the Code it reveals to the officer incharge of police station that there is no sufficient evidence or

reasonable grounds to suspicion to justify the prosecution against the accused, he can release such persons after taking bond requiring his appearance before the Magistrate, if in future the same becomes necessary. The report in Section 173(2) of the Code is required to be submitted after completion of investigation and even when the officer is of the opinion that no sufficient material is against the accused, in view of Section 173(2)(d), specific opinion formed by the police officer is required to be mentioned in the report. Section 173(4) shows that the Magistrate can reject the report.

13. Thus, the law is that the Magistrate is not bound to accept such report.

14. Reading of Section 170 with 173 reveals that if the investigating officer forms an opinion that there is sufficient evidence or reasonable grounds of suspicion to

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justify the forwarding of the accused to the Magistrate, such Officer shall forward the accused under custody to the Magistrate empowered to take cognizance on Police report and to try the accused or to commit him for trial. Section 173 (2)(d) shows it needs to be specifically mentioned in the report filed under the section by the Investigating Officer that the offence has been committed and if it has been committed, the name of the accused, who is being forwarded to the Magistrate for commission of the offence. Section 173(2)(g) of the Code shows that it needs to be informed to the Magistrate that the accused has been forwarded to the Magistrate after forming opinion as required under Section 170 of the Code. The definition of police report is given in Section 2(r) of the Code which shows that i) when the opinion is formed that it is not a fit case for forwarding the accused under section 170 and case falls under Section 169 of the Code or ii)

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when the opinion is formed that it is a fit case to forward the accused under Section 170 of the Code, the report is required to be prepared as per the provisions of Section 173 of the Code. The provisions of Sections 173 and 190(1)(b) of the Code together show that when such report is submitted, there is discretionary power to the Magistrate either to take cognizance of the offence or to refuse to take cognizance.

15. Thus, the above provisions show that the discretion is vested in the Magistrate but such discretion needs to be used judiciously. In a case, where a Magistrate decides not to take cognizance of an offence and drops proceedings, and there are insufficient grounds against some persons mentioned in the FIR, the Magistrate must give notice to the informant and give him an opportunity to hear at the time of consideration of the report. However, either from the provisions of the Code or from the principles of natural

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justice, no obligation on the Magistrate to issue notice to the injured person or to relative of the deceased for providing such persons an opportunity to hear at the time of consideration of the report can be spelled out, unless such persons is the informant who lodged the FIR. But even if such person not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. But, if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceedings or takes the view that though there is sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose; wholly or in part. Moreover, when the

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interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2) (ii) of Section 173, the officer of the police station under Section 157(2) to notify to the informant the fact that he is not going to investigate the case and under Section 73(2) the said officer is under obligation to communicate the action taken by him and report forwarded by him to the Magistrate. it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process. There is no doubt that on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an

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opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process.

16. It is well settled that if the court is of the opinion that the 'B' Summary Report submitted by the police has to be rejected, by expressing its judicious opinion, after applying its mind to the contents of 'B' report, the court has to reject the 'B' Summary Report.

17. The application of judicious mind is distributable only in the order reasons are live-links between mind of the decision taken to the controversy in question and the decision arrived at. Reason and application of mind are essential for judicial order to sustain scrutiny of law. Admittedly, Reasons in every circumstances need not be elaborate, but nevertheless should bear application of mind.

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18. The Hon'ble Apex Court, in the case of **Vishnu Kumar Tiwari vs. The State of Uttar Pradesh, reported in AIR 2019 SC 3482**, referring its earlier decision, held that it is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the Investigating Officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down.

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19. The Hon'ble Apex Court, in the case of **Ramswaroop Soni vs. The State of Madhya Pradesh and anr, reported in AIR 2019 SC 3801**, also held that the law is well-settled that in case a final report is filed under Section 173(2) of the Code stating that no offence is made out against the accused, any of the following courses can be adopted by the Magistrate: (a) he may accept the report which was filed by the police in which case the proceedings would stand closed; (b) He may not accept the report and may take cognizance in the matter on the basis of such final report which was presented by the police; and (c) if he is not satisfied by the investigation so undertaken by the police, he may direct further investigation in the matter.

The law is further well-settled that the judicial discretion to be used by the Magistrate at such stage has to fall in either of the three aforesaid categories.

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20. The position is, therefore, now well settled that upon receipt of a police report under section 173(2) of the Code, a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigation officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section

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190(1)(b) and direct the issue of process to the accused. Where the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, and insufficient material in respect of the informant would certainly be prejudiced. Therefore, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory.

21. The record of the present matter, which is mostly not considered by learned Judge below, shows that the various incidents narrated by the informant are not substantiated by any material. The report of the investigating officer shows that as to the incidents dated May 2022 and December 2022, there are inconsistent statements of the informant that is also not stated the exact date on which the alleged incident has taken place.

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As per the statement of the victim, the incident dated 17.12.2022 took place in presence of Sanket Gaikwad. The statement of said Sanket nowhere substantiates the said allegations during his statement. The incident dated 19.5.23 wherein it is alleged that the accused threatened husband of the informant, but statement of husband is also inconsistent. Moreover, these statements are to be considered in the light of various crimes registered against the informant at various police stations. The documents further show that the accused who was superior officer has passed the order of distribution of work amongst Inspectors of Motor Vehicles and refused the request of the informant to make her member of flying squad or to be posted at border check-post was not accepted by the accused. The documents further show that the informant is junior to another officer and was appointed as RTO at Nagpur city and, therefore, the informant as well as officer

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Vijay Chauhan was having grudge as the applicant superseded them. Though statement of Vijay is recorded, he has not disclosed the conversation took place between the informant and the accused. On the basis of the complaint lodged by the informant, grievance redressal committee was constituted and in the said complaint the incident dated 10.1.2023 is totally absent. Perusal of the case diary shows that the informant and her husband both were showing as Inspectors of Motor Vehicles and were trapped in the month of February 2023 and May 2023 respectively in anti corruption cases and departmental action was also taken against them. The record further shows that the accused had also made various complaints/representations to the police authorities against the informant. As per the FIR, the first incident is of the year 2021 and continued upto January 2023, but the informant has not made her grievance till January 2024. Thus, it can

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be ascertained that there are internal dispute as to seniority between the accused and informant and also dispute as to distribution of duties. The allegation in the FIR also shows that there is apprehension to the informant that her husband would be implicated in corruption case. This fact is absent in complaint.

22. Thus, in the light of the aforesaid facts and the statements of various witnesses including the statements of officials of RTO office, whose names are stated by the informant, also not substantiate the allegations made by the informant. There is no material to have circumstantial check to the allegations made against the accused. In view of these circumstances, there was no reason to disbelieve the investigating officer who decided to file report under Section 169 of the Code. It is already observed that there are various disputes between the informant and the accused as to the duties allotted by the

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the accused. The informant is assigned with the duty of RTO Inspector by superseding the other senior officers. These facts are not considered by learned Judge below and he has not applied the mind. It was expected that learned Judge below should assign the reasons for not accepting the report. The order impugned shows that learned Special Judge only reproduced the report and without assigning any reasons rejected the B-Summary Report. If the accused is compelled to face trial, in view of the aforesaid circumstances, it would amount to abuse of process of law.

23. In this view of the matter, this court passes following order:

ORDER

(1) The appeal is **allowed**.

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(2) The order dated 12.12.2024 passed below Exh.1 by learned Special Judge, Nagpur in B.Summary Case No.1/2024 is set aside.

(3) The B-Summary Report is accepted.

(4) Fees of learned counsel Shri Sameer Sonwane appointed for respondent No.3/informant be quantified and the same be paid to him as per rules.

The appeal stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!