



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.130 OF 2025

Rajkaniya Mahadeorao Khandare and another .Vs. State of Maharashtra, through
PSO, PS Dharni, Tah. Dharni, Dist. Amravati

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Abdul Subhan, Advocate for petitioners.
Ms Soniya Thakur, A.P.P. for respondent/State.

CORAM : ANIL S. KILOR, J.
DATED : 05/03/2025

1. Heard.
2. The present writ petition takes exception to the charges framed against the petitioners on 26.08.2024 on the ground that, while framing the charges, the petitioners were not given an opportunity of being heard.
3. The learned A.P.P. is not disputing the said fact. Thus, whether the accused is to be granted hearing before the framing of the charge or not, is the question involved which is no more *res integra* in view of the judgment of the Co-ordinate Bench of this Court in the case of *Ambadas Kashirao Kharad ..vs.. State of Maharashtra*, reported in **2007 ALL MR (Cri) 1916**, has observed thus :-

“7. Section 226 of the Code of Criminal Procedure provides that after the accused appears or is brought before the Court pursuant to commitment of case under Section 209 the prosecutor shall open his case by

*describing the charge brought against the accused and stating by what evidence he proposes to prove guilt of the accused. Section 227 contemplates consideration of the record of the case by the Judge and hearing of the submissions on behalf of the accused and prosecution and passing of the order either framing charge or discharging the accused. It is now well settled by catena of the decisions of the Apex Court that if the Judge wants to frame charge he may not pass a detailed order giving reasons but if he wants to discharge the accused he has to give detailed reasons for discharging the accused. See **Om Wati (Smt.) and Anr. .vs. State & Ors., 2001 SCC (Cri) 685**. However, Section 227 mandates consideration of the record and hearing of the prosecution as well as accused before passing an order framing charge or discharging the accused. Section 228 of the Code of Criminal Procedure contemplates consideration of the record and hearing of the accused for the purpose of finding out if there is ground for presuming that the accused has committed any offence. In case after perusing the record and hearing the prosecution and the accused, the Judge comes to the conclusion that the offence is exclusively triable by the Sessions Court he has to frame charge against the accused and thereafter proceed further in terms of the Chapter XVIII of the Code of Criminal Procedure. In case the Judge comes to the conclusion that *prima facie* case is made out against the accused for the offence/ offences triable by the Magistrate and not exclusively triable by the Court of Sessions the Judge has to frame charge and transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate, First Class as the case may be and direct the accused to appear before the concerned Magistrate on such date he deems fit and thereupon the concerned Magistrate has to try the offence in accordance with the procedure for the trial of warrant cases instituted on police report.”*

4. In view of the above referred authority and further considering that no hearing was granted to the petitioners before the charge was framed, I am of the opinion that the petition needs to be allowed. Accordingly, the writ petition is **partly allowed** in terms of prayer

clause-(a) and the matter is remanded back to the learned Magistrate to pass the necessary order after hearing the petitioners.

JUDGE

C.L.Dhake