



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

CRIMINAL WRIT PETITION No. 616/2025.

Suresh s/o Devrao Kamdi,
Aged about 52 years, Occupation
Service, resident of 118, Shrihari
Nagar No.2, Manewada,
Nagpur 440027.

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PETITIONER.

VERSUS

1.State of Maharashtra,
through P.S.O. Hudkeshwar, Nagpur.

2.Smita w/o Suresh Kamdi,
Aged about 48 years, Occupation
Advocate, resident of c/o. N.P.Khode,
28, East, Narkesri Layout, Jayprakash
Nagpur, Nagpur.

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RESPONDENTS.

Ms H.M. Joshi, Advocate for the Petitioner.
Mr. A.M. Joshi, A.P.P. for Respondent No.1.
Mr. Y.B. Mandpe, Advocate for Respondent No.2.

CORAM : M.M. NERLIKAR, J.

DATE : OCTOBER 13, 2025.

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ORAL JUDGMENT :

Heard. Rule. Rule is made returnable forthwith and by consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. A short controversy which arises in this petition is – Whether the original accused is entitled for hearing in the revision application ? The learned Counsel for the petitioner has also raised a grievance about the impugned order being non-reasoned.

3. I have perused the said order. It appears that a first information report came to be registered at the instance of the petitioner against his wife for the offence punishable under Section 306 of the Indian Penal Code. The allegations which are made against the wife is that due to ill-treatment and harassment to the mother of petitioner, mother of petitioner has committed suicide. After investigation 'C' summary report came to be filed. The petitioner has objected to the said 'C' summary report and also requested for further

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investigation. The learned Judicial Magistrate First Class (M.V. Court) Nagpur, rejected the prayer of the petitioner for further investigation and accepted the 'C' summary report by order dated 02.01.2024. Against this, the petitioner had preferred Criminal Revision No.90/2024.

4. The respondent no.2/original accused in the said criminal revision application filed an application for intervention, and after hearing both the sides, by an order dated 21.04.2025, the learned 9th District Judge and Additional Sessions Judge, Nagpur permitted respondent no.2 herein, to intervene in the matter. Against this, the petitioner has approached this Court by way of this Writ Petition.

5. The learned Counsel for the petitioner submits that the respondent no.2 does not have any locus to intervene in the matter, as she is the original accused. He further submits that revision is continuation of the original proceeding, and in the present case petitioner's objection against 'C' summary report was rejected, against the same revision application has been preferred. Apart from

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this, the order of the Sessions Judge is cryptic, as no reason is assigned therein for allowing respondent no.2 to intervene in the matter.

6. On the other hand, the learned Counsel appearing for the respondent no.2 submits that at a revisional stage, the respondent no.2 has every right to defend, and therefore, the intervention application is maintainable. For this purpose the learned Counsel has relied on the judgment of Hon'ble Supreme Court in the case of **Manharibhai Muljibhai Kakadia .vrs. Shaileshbhai Mohanbhai Patel and others – (2012) 10 SCC 517**, more particularly paragraph nos.37, 38, 46 and 53 therein, which reads as under :

“37. The question now is, in a matter of this nature where complaint has been dismissed by the Magistrate under Section 203 post cognizance stage and pre-issuance of process, whether on challenge to the legality of the order of dismissal of complaint being laid by the complainant in a revision application before the High Court, the persons who are arraigned as accused in the complaint have a right to be heard.

38. Before we deal with the above question further, some of the decisions of the High Courts upon which heavy reliance was placed by the

counsel for the respondent no. 1 may be noticed. In Panatar Arvindbhai Ratilal (1991) 1 Guj.LR 451, a Single Judge of the Gujarat High Court had an occasion to consider locus standi of the suspects at the stage of grant of 'C' Summary. That was a case where the police did not initiate any investigation for quite some time in respect of an offence registered with the police station. The complainant approached the CJM wherein direction for investigation by the police was made. The police after investigation submitted report and sought 'C' Summary. The complainant objected to the report submitted by the police as to 'C' Summary. The Magistrate allowed the suspects to be heard against which the complainant filed the criminal revision before the Sessions Judge. The Sessions Judge agreed with the complainant and overruled the order of the Magistrate allowing the accused to make submission. There were seven accused in the complaint and two of them approached the High Court against the order of the Sessions Judge. The Single Judge of the High Court confirmed the order of Sessions Judge. The Magistrate thereafter heard the complainant and granted 'C' Summary. Against that order, the complainant filed a revision before the Sessions Judge. Two accused who had earlier challenged the order of the Sessions Judge before the High Court applied to the Sessions Judge for permission to make submission in support of the order of the Magistrate. The Sessions Judge allowed the application made by the accused against which

order the complainant filed criminal revision before the High Court. The High Court noted the provisions contained in Sections 397(2) and 403 of the Code and then held that allowing the suspects to be heard at this stage would amount to permitting them to have their say at the stage which is not contemplated by the Code and it would be giving a premature hearing to the accused. The High Court was persuaded by the submission of the complainant that an accused cannot be given pre-trial hearing.

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46. *The legal position is fairly well-settled that in the proceedings under Section 202 of the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, upto the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs an investigation to be made by a Police Officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds that there is no sufficient ground for*

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proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. The Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

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53. We are in complete agreement with the view expressed by this Court in *P. Sundarrajan* (2004) 13 SCC 472, *Raghu Raj Singh Rousha* (2009) 2 SCC 363, and *A. N. Santhanam* (2012) 12 SCC 321. We hold, as it must be, that in a revision petition preferred by complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a

person who is suspected to have committed crime is entitled to hearing by the revisional court. In other words, where complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the revisional court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled.”

7. Per contra, the learned Counsel for the petitioner has relied on the judgment of Supreme Court in the case of **Ramchandrai and another .vrs. Manjula and others – AIR 2025 SC 2329**, so as to submit that the accused is not entitled to be heard at the revisional stage. However, after perusal of the aforesaid judgment, from the facts

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narrated in paragraph nos. 13 and 14 of the said judgment, the stage therein was of registration of first information report, and thus, the facts are quite different from the facts of the case in hand. Therefore, the said judgment is not helpful to the petitioner.

8. Upon hearing both the learned Counsel it is clear that admittedly in the revision application filed by the petitioner, who is original informant, objection was raised to the 'C' summary report. He also prayed for further investigation to be carried out. It is not in dispute that the respondent no.2 was added as an accused in the first information report and after conducting the investigation, 'C' summary report was filed before the Magistrate. It is also not in dispute that the petitioner has objected to the said 'C' summary, however, that was rejected and in the revision application, the respondent no.2 was permitted to intervene.

9. As can be gathered from the judgment of the Hon'ble Supreme Court in case of Manharibhai (supra), at the revisional stage, the original accused or proposed accused is entitled for hearing before

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the Revisional Court. It is further to be noted that so far as Sections 440 and 442 of the Bhartiya Nagrik Nyaya Sanhita (BNSS) are concerned, while exercising power under Section 440 of BNSS by the Sessions Judge, the provision of Section 440[2] applies to such proceeding and reference in the said sub-section to the High Court shall be construed as reference to the Sessions Judge. So far as Section 442[2] of the BNSS is concerned, it specifically provides that no order under this section shall be made to the prejudice of the accused or other person unless he had an opportunity of being heard either personally or by an advocate in his own defence.

10. Thus, in view of the law laid down by the Supreme Court referred above, the position is crystal clear that at the revisional stage the proposed accused or the accused can very well intervene in revision proceeding. It is also a settled position of law that at any stage of the proceeding, until issuance of process under Section 75[3] of the BNSS, the accused does not have a right to intervene or to be heard. Considering this fact, the Revisional Court has rightly permitted the respondent no.2 to intervene in the matter.

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11. So far as the second ground raised by the petitioner is concerned, that the order is non-reasoned and cryptic. From bare perusal of the order, there is no doubt in my mind that the order is cryptic, and un-reasoned. It is the duty of the Sessions Court to record reasons in support of the order. Considering this fact, I am of the opinion that the order dated 21.04.2025 does not sustain in law, as it sans reasons. In this view of the matter, the order dated 21.04.2025 is quashed and set aside. The matter is remanded back to be heard afresh after giving opportunity to the parties before it. Hence, the following order.

ORDER

- (1) Criminal Writ Petition is partly allowed and disposed of.
- (2) The order passed by the 9th District Judge and Additional Sessions Judge, Nagpur dated 21.04.2025 is hereby quashed and set aside. The matter is remanded back to the said Court for passing fresh order after giving opportunity of hearing to the

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parties, i.e. Petitioner and respondents herein.

- (3) The Court below shall pass fresh order without being influenced by the observations of this Court, and record separate reasons while passing fresh order.
- (4) Rule is made absolute in aforesaid terms.

JUDGE