



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

CRIMINAL WRIT PETITION NO. 1011 OF 2025

Siddharth Motiram Savdekar

-- VERSUS --

State of Maharashtra and Another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Alok Daga, Advocate for the Petitioner.

Mr. G.S. Umale, A.P.P. for the Respondent No.1/State.

CORAM : M.M. NERLIKAR, J.

DATE : DECEMBER 08, 2025.

Heard the learned counsel for the petitioner and the learned A.P.P.

2. The petition under Articles 226 and 227 of the Constitution of India challenges the order dated 07/04/2025 passed below Exh.-10 and order dated 03/07/2025 passed below Exh.-19 in Special Atrocities Case No.22/2016 by the Additional Sessions Judge, Khamgaon.

3. The learned counsel for the petitioner submits that the petitioner has filed complaint before registration of the First Information Report on 12/06/2016 with the Police Agency, however, they have not taken cognizance of the same. Thereafter,

on 05/08/2016, again a complaint came to be filed which led to registration of F.I.R. under Section 3(1) (10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and under Section 447 of the Indian Penal Code, 1860.

4. The original complainant has filed an application to assist the prosecution. Accordingly, it was allowed. Thereafter, the application was filed by the original complainant, wherein prayer was made to place on record the copies of earlier complaints which are filed with the police agencies as those were not part and parcel of the charge-sheet. However, the trial Court by detailed order dated 07/04/2025 rejected the application. Thereafter, again on 03/07/2025 identical application was filed for production of documents on record, even that application was rejected by the Trial Court on 03/07/2025.

5. The Trial Court has observed that in the case at hand this Court has not formed any opinion about production of documents to invoke power under Section 91 of the Cr.P.C. It was further observed by the Trial Court that it is not open for the complainant to doubt the Investigating Officer and take different stand than the prosecution.

6. After perusal of the entire order, so also, the F.I.R. which was registered on 05/08/2016 and the complaints which were paced on record before filing of the F.I.R., i.e., 12/06/2016 and 13/06/2016, it could be gathered that Court has rightly observed that production of the documents can be allowed only if the Court thinks fit by invoking power under Section 91 at appropriate stage. Further, the complainant cannot be permitted to take a different stand than the prosecution. As permitting such different stand would tantamount to destroying the case of the prosecution which is not permissible. There is also no mention of earlier complaint filed by the complainant in the complaint which led to the registration of the F.I.R.

7. The right of the victim, insofar as assisting the prosecution is concerned, is limited only to assist the prosecution and not to conduct a parallel trial. If the documents are with the victim, then it is the duty of the victim to furnish it to the Investigating Officer during the course of investigation, or, to the prosecutor during the trial, in case, if the documents are with the police before registration of the FIR, then the victim may make a request to the Investigating Officer to include those documents and file along with charge-sheet. Failure on the part of Investigating Officer, victim is always at liberty to file

appropriate proceedings for the same. However, during the trial, the victim cannot be permitted to file documents separately on record or request the Court to take those documents on record. The trial is to be conducted by the Public Prosecutor, and allowing the victim to tender documents through a private lawyer would amount to engaging a private lawyer to conduct the trial. It is settled position of law that a victim can only instruct pleader to act on his behalf in Court, however, the prosecution must be conducted by the Public Prosecutor, the Assistant Public Prosecutor, or Special Counsel engaged by the State. The object behind this is that the Public Prosecutor is expected to be fair to the Court, and there is every likelihood that the victim may dealt with the trial as per their own wishes or whims.

8. Under such circumstances it would be useful to refer to the observations in the case of *Mallikarjun Kodagali (Dead) VS. The State of Karnataka & Ors., 2018 INSC 969*, wherein the Supreme Court has observed in Para No.19, which read thus:-

“19. Though the victim has rights, one cannot forget that a victim who may have suffered, may also seek revenge. Therefore, an obligation has been cast upon the State to prosecute the accused. In fact, even now a trial under the CrPC has to be conducted by the Public Prosecutor or Assistant

Public Prosecutor. No private lawyer can be engaged to conduct the trial under Section 301(2) of CrPC. A private person including the victim, can only instruct a pleader to act on his behalf in court but the prosecution has to be conducted either by the Public Prosecutor or Assistant Public Prosecutor and the pleader engaged by the private person can only act as per the directions of the Public Prosecutor or Assistant Public Prosecutor. The reason behind this is that the victim may fabricate evidence or hide true facts whereas the Public Prosecutor or Assistant Public Prosecutor is expected to be fair to the court, to the accused and to the victim.”

Further, the Supreme Court in the case of ***Rekha Murarka VS State of West Bengal and Another, (2020) 2 SCC 474***, wherein while discussing as to what extent the counsel can assist the public prosecutor, the Court discussed as follows:-

“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.

11.4. 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."

9. Therefore, the victim / petitioner cannot be permitted to run a parallel trial. The role of the victim is only to the extent of assistance to the Public Prosecutor. In this view of the matter, there is no

merit in the petition and the petition is accordingly **dismissed**. Needles to mention that the findings of this Court are *prima facie* in nature, and it shall not influence the trial Court.

[M.M. NERLIKAR, J]

PIYUSH MAHAJAN