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**MAHARASHTRA
CRIMINAL JUDGEMENTS**

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ABETMENT OF SUICIDE

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BAIL UNDER NDPS

Bail Under NDPS - Applicant arrested for possession of 460 grams of Mephedrone and supplying same to co-accused - Contended non-compliance of Sec.42 and Sec.50 NDPS Act - Prosecution produced contemporaneous record and notices showing compliance - Court observed that personal search was taken by gazetted officer with lady panch and lady police officer - Held that procedural safeguards complied - Recovery being commercial quantity and applicant being foreign national with expired visa, risk of absconding high - Bail denied - Bail Application Rejected [*Blessing Amaka Okonko vs. State of Maharashtra* (BOMBAY HIGH COURT) 2026(1)McrJ40]

BAIL UNDER NDPS

Bail under NDPS - Applicant arrested for possession of 100 grams of Mephedrone and alleged involvement in drug trafficking - Contended non-compliance of Sec.42 and 50 NDPS Act, delay in FIR and long custody - Prosecution argued search under Sec.43 valid as recovery during patrolling, and compliance made - Court examined Section 37 restrictions and found commercial quantity involved - Observed applicant failed to show reasonable grounds for believing he not guilty and that continued custody justified under statutory bar - Long incarceration alone insufficient to override limitations of Sec.37 - Bail refused considering gravity of offence and recovery circumstance - Bail Rejected [*Arbaz Aslam Shaikh vs. State of Maharashtra* (BOMBAY HIGH COURT) 2026(1)McrJ73]

COMPENSATION ORDER

Compensation Order - Appellant challenged direction of Magistrate granting compensation to accused under Section 250 Cr.P.C. after acquittal in cheque dishonour case - Magistrate held complainant initiated proceedings without reasonable ground - Appellant contended mere failure to prove case does not attract Section 250 - Court

observed Section 250 applies only when complaint found false or made without reasonable cause and requires recording of reasons - Acquittal for want of proof not equivalent to baseless accusation - Court found Trial Court erred in equating failure of evidence with frivolous prosecution - Order imposing compensation set aside - Appeal Allowed [*Prashant S/o Himmatrao Jawarkar vs. Dr Ganesh S/o Pandurang Vasu* (BOMBAY HIGH COURT) 2026(1)McrJ93]

CONCURRENT SENTENCE

Concurrent Sentence - Applicant sought modification of appellate judgment to state that substantive sentences under Sections 376(g) and 506 read with 34 IPC should run concurrently and prayed for release - Application made years after conviction attained finality - State opposed stating speaking to minutes cannot be used to review or modify final judgment - Court observed such application limited to correction of clerical or typographical error and not to alter operative order - Held omission to mention concurrent sentence cannot be treated as clerical error - Applicant at liberty to seek appropriate remedy but relief not grantable under speaking to minutes - Application Dismissed [*Pintu Girdharilal Yadav vs. State of Maharashtra* (BOMBAY HIGH COURT) 2026(1)McrJ119]

DEBIT FREEZE OF ACCOUNTS

Debit Freeze of Accounts - Petitioners challenged debit freezing of bank accounts by police under Section 106 of BNSS - Freezing done on ground that fraud money credited to their accounts - Court referred to Kerala High Court ruling affirmed by Supreme Court that Section 106 permits seizure only for evidence purpose, not attachment or freezing - Attachment of proceeds of crime possible only under Section 107 through Magistrate's order - Police action beyond jurisdiction - Orders quashed - Petitioners permitted to claim compensation for unlawful freezing - Petitions Allowed [*Kartik Yogeshwar Chatur; Dilip Gopaldas Duwani; Dinshaws Dairy Foods Private Limited; Surendra Ramrao Geed; Rajani Suresh Mangalani; Dev Dilip Duwani; Gaurav Rajesh Mehta vs. Union of India & Ors* (BOMBAY HIGH COURT) 2026(1)McrJ89]

DEMAND OF BRIBE

Demand of Bribe - Appeal filed against acquittal order under Prevention of Corruption Act - Allegation that public servant demanded illegal gratification for passing order in mutation entry - Trap laid by Anti-Corruption Bureau and recovery made - Trial Court acquitted accused on ground of lack of corroboration and absence of proof of conscious acceptance - Evidence of complainant and panch witnesses considered not credible - Appellate Court observed that double presumption of innocence operates in case of acquittal and interference permissible only if findings are perverse or unreasonable - Evidence reappreciated showing that prosecution failed to prove demand and acceptance beyond reasonable doubt - Held that mere recovery not sufficient to convict without proof of demand and voluntary acceptance - Acquittal

based on proper appreciation of evidence - Acquittal confirmed - Criminal Appeal Dismissed [*State of Maharashtra vs. Maruti Bhikaji Borkar; Ramesh Dhondiba Ware; Shrikant Sopan Gaikwad* (BOMBAY HIGH COURT) 2026(1)McrJ44]

FIR QUASHING NEGLIGENCE

FIR Quashing Negligence - Applications filed under Section 482 CrPC seeking quashing of FIR registered under Section 304A IPC relating to death of child due to fall in pothole at construction site - Applicants were Managing Director and Engineer of construction company - Evidence showed Managing Director not handling daily operations and Engineer joined after incident - No proof of personal negligence or vicarious liability - Court held criminal law does not recognize vicarious liability unless statute provides - No material to proceed against applicants - FIR and proceedings quashed - Applications Allowed [*Krishna Mandadi; Venkata Siva Kishore Patnala vs. State of Maharashtra; Chandrabhan Meghare* (BOMBAY HIGH COURT) 2026(1)McrJ34]

HOMICIDE OR SUICIDE

Homicide or Suicide - Appellants convicted for murder of deceased based on eyewitness account and confession - Prosecution alleged homicidal death by hanging - Defence argued it was suicide and delay in recording statements created doubt - Court examined medical and circumstantial evidence - Found inconsistencies between postmortem report and prosecution version - Eyewitness statements recorded after long delay and lacked credibility - Memorandum and seizure panchanamas found unreliable - Court held prosecution failed to prove guilt beyond reasonable doubt - Benefit of doubt extended - Conviction set aside - Accused acquitted and ordered to be released - Appeals Allowed [*Rahul S/o Devidas Mahapure; Vitthal S/o Ramkisan Dhanwate vs. State of Maharashtra* (BOMBAY HIGH COURT) 2026(1)McrJ10]

ILLEGAL DETENTION

Illegal Detention - Petition filed by relative of two accused arrested in a criminal case under provisions of BNSS and Bombay Police Act - Direction sought for their production before Magistrate and declaration that continued detention in Taloja Central Prison without valid remand order is illegal - Arrest and remand orders examined from record showing no extension of magisterial custody after fixed date - Petitioner contended non-production of accused either physically or through video conferencing violates Article 21 of Constitution - Authority admitted absence of further remand but urged that production would be made and bail remedy open - Court examined provisions of BNSS and held judicial custody requires express sanction by order of competent Magistrate and cannot be deemed extended by default - Detention beyond remand period without valid order lacks legal sanction and amounts to violation of personal liberty - Custody directed to be regularised in accordance with law and accused ordered to be produced before competent Magistrate forthwith - Petition Partly Allowed [*Shazaib Sabir Patel vs. State of Maharashtra &*

Anr (BOMBAY HIGH COURT) 2026(1)McrJ64]

INSOLVENCY DECLARATION

Insolvency Declaration - Petitioner sought declaration of insolvency citing inability to pay maintenance ordered under Section 125 CrPC - Contended debts exceeded statutory limit - Court observed insolvency cannot absolve personal liability to pay maintenance - Maintenance order not a debt dischargeable under insolvency laws - Provisions of Insolvency Act provide eligibility to file petition but not automatic declaration - Petitioner failed to satisfy jurisdictional condition and relief claimed beyond legislative intent - Petition Dismissed [*Mehul Jagdish Trivedi vs. Manisha Mehul Trivedi* (BOMBAY HIGH COURT) 2026(1)McrJ80]

MAINTENANCE ENTITLEMENT

Maintenance Entitlement - Wife challenged family court order denying maintenance under Sec. 125 CrPC - Lower court held she suppressed DV proceeding where interim maintenance granted - Applicant argued suppression not deliberate and husband failed to prove ability or her income - Respondent claimed wife educated and capable of earning - Court observed wife disclosed pending DV proceeding and only omitted interim order - Non-disclosure not fatal under beneficial legislation - Husband failed to adduce evidence - Held wife can claim maintenance under multiple statutes but quantum must adjust previous award - Family court erred in dismissing claim solely for non-disclosure - Matter remanded for reconsideration - Revision Partly Allowed [*Sujata W/o Nishant Manwar vs. Nishant S/o Ramesh Manwar* (BOMBAY HIGH COURT) 2026(1)McrJ27]

OUTRAGING MODESTY ALLEGATION

Outraging Modesty Allegation - Applicant sought quashing of criminal proceedings for offence under Sec. 354 IPC - Allegation arose after a political meeting where complainant claimed applicant touched her chest and insulted her - Initial non-cognizable report recorded for assault and threat without mention of outraging modesty - Subsequent FIR filed adding Sec. 354 - Applicant contended FIR was malafide and investigation without Magistrate's permission violated Sec. 155(2) CrPC - Majority of witnesses did not support prosecution version - Only one witness marginally supported complaint - Court noted omission in first report was material and subsequent FIR appeared afterthought - Held police could not investigate non-cognizable offence without Magistrate's order - Continuation of prosecution constituted abuse of process - Criminal Proceedings Quashed [*Sanjay Pandurang Singhan vs. State of Maharashtra and Anr* (BOMBAY HIGH COURT) 2026(1)McrJ19]

PREVENTIVE DETENTION BOOTLEGGING

Preventive Detention Bootlegging - Petitioner detained as bootlegger under MPDA Act - Detention based on two prohibition offences and statements of secret witnesses - No Chemical Analyser report showing seized liquor injurious to health - Witness

statements stereotype and not showing disturbance to public order - Court observed absence of CA report prevented subjective satisfaction of detaining authority regarding danger to public health - Acts indicated breach of law and order, not public order - Detention order arbitrary and unsustainable - Quashed - Petition Allowed [*Ibbu Kashim @ Kasim Nuriwale vs. State of Maharashtra; District Magistrate, Beed; Superintendent of Police, Beed; Additional Superintendent of Police, Ambajogai; Officer Incharge* (BOMBAY HIGH COURT) 2026(1)McrJ59]

QUASHING OF CHARGE-SHEET

Quashing of Charge-Sheet - Petitioners sought quashing of charge-sheet under various IPC sections alleging obstruction to municipal officers during duty - Incident arose when officials attempted to attach property for tax arrears - Petitioners claimed misunderstanding and absence of intent to obstruct - They expressed remorse and premises now desealed - Long pendency of prosecution noted - Court held continuing proceedings after long lapse would constitute abuse of process - Considering nature of allegations and settlement approach, charge-sheet quashed - Petition Disposed [*Ravindra Dagadu Gaikwad; Vyankatesh Dnyaneshwar Bacchal; Vishal Ramkisan Jadhav vs. State of Maharashtra* (BOMBAY HIGH COURT) 2026(1)McrJ57]

SENTENCE SUSPENSION

Sentence Suspension - Application filed for suspension of sentence after conviction for rape of mentally challenged woman - Appellant aged sixty years undergoing ten-year sentence - Court observed lack of medical proof of victim's mental condition - Victim's testimony weak and not fully corroborated - Evidence disclosed arguable case - Appeal unlikely to be heard soon - Considering age and period of incarceration, sentence suspended till appeal disposal subject to bail bond - Sentence Suspended [*Shivaji Asaram Kadam vs. State of Maharashtra and Another* (BOMBAY HIGH COURT) 2026(1)McrJ55]

SEXUAL ASSAULT ON MINOR

Sexual Assault on Minor - Appeal against conviction under Sec. 354 IPC and Sec. 10 POCSO Act - Victim aged five years deposed offender called her on pretext of fruit, removed her clothes and touched private parts - Testimony consistent with mother and sister and corroborated by prompt report - Medical evidence confirmed absence of penetration but supported incident - Defence of false implication rejected - Court upheld finding of guilt and sentence imposed by trial court - Appeal dismissed [*Kalim Attarli Shaikh vs. State of Maharashtra; X Y Z* (BOMBAY HIGH COURT) 2026(1)McrJ110]

SUPPLEMENTARY CHARGE-SHEET

Supplementary Charge-Sheet - Petitioners challenged order permitting prosecution to file supplementary charge-sheet - Contended that Investigating Officer did not obtain leave for further investigation and no new material produced - Record showed permission granted by Court and statement of informant implicating petitioners placed

on record - CCTV and mobile footage also part of investigation - Court held further investigation continuation of earlier investigation and right of investigating agency cannot be curtailed - Filing at later stage not fatal - Observed that whether petitioners involved is matter of trial - Interference in interlocutory order not warranted - Petition Dismissed [*Sumit S/o Karan Singh Gautam; Imran S/o Abdul Haquie Turak; Ashish S/o Narendra Gajbhiye; Firozkhaa S/o Moharamkhaa Pathan vs. State of Maharashtra* (BOMBAY HIGH COURT) 2026(1)McrJ103]



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MAHARASHTRA CRIMINAL JUDGEMENTS

2026(1)McrJ1

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

(Hon'ble Judge: Urmila Joshi-Phalke; Nandesh S Deshpande)

Criminal Application (Apl) No 1308 of 2023 **dated 19/12/2025**

Santosh S/o Haribhau Bharne; Dipak S/o Haribhau Bharne

Versus

State of Maharashtra; Ravi Atmaram Jadhav

ABETMENT OF SUICIDE

Indian Penal Code, 1860 Sec. 34, Sec. 107, Sec. 306 - Code of Criminal Procedure, 1973 Sec. 482 - Bharatiya Nyaya Sanhita, 2023 Sec. 108, Sec. 45 - Abetment Of Suicide - FIR lodged alleging humiliation and abuse by applicants led woman to commit suicide - Applicants sought quashing under Sec.482 CrPC claiming absence of instigation or aid - Record showed deceased was abused but no proximate act of incitement or mens rea established - Mere humiliation or quarrel without deliberate provocation insufficient to constitute abetment - Requirement of direct act or intention to aid or instigate suicide not fulfilled - Prosecution case lacked material of continuous harassment or compulsion - Proceedings under Sec.306 IPC found unsustainable - Criminal Proceedings Quashed

Law Point: To attract offence under Sec.306 IPC there must be clear evidence of instigation or intentional aid causing person to commit suicide - Mere insult, humiliation or casual remark without mens rea or direct link to act of suicide cannot constitute abetment in law.

Acts Referred:

Indian Penal Code, 1860 Sec. 34, Sec. 107, Sec. 306

Code of Criminal Procedure, 1973 Sec. 482

Bharatiya Nyaya Sanhita, 2023 Sec. 108, Sec. 45

Counsel:

A S Mardikar (Senior Counsel), Kaushiki Gadge, N B Jawade, K E Meshram

JUDGEMENT

Urmila Joshi-Phalke, J.- [1] Heard learned Senior Counsel Shri A.S.Mardikar for applicants, learned Additional Public Prosecutor Shri N.B.Jawade for non-applicant No.1/State, and learned counsel Mrs.K.E.Meshram appointed for

nonapplicant No.2/informant. **Admit.** Heard finally by consent of learned counsel for the parties.

[2] The present application is preferred by applicants under Section 482 of the CrPC for quashing of FIR in connection with Crime No.155/2023 registered under Section 306 read with 34 of the IPC and consequent proceeding arising out of the same bearing chargesheet No.253/2023.

[3] Brief facts necessary for disposal of the application are as under:

The crime is registered on the basis of a report lodged by non-applicant No.2 on an allegation that when he had been to village Waghad for some work, he received a phone call from his father. The father of the informant informed him that when he was in his bedroom, he heard a noise at main gate of his house and when he went to see, it revealed to him that applicant No.1 entered into bedroom of the deceased and did not come out and applicant No.2 was also standing outside the house and was abusing in filthy words about the deceased. The applicants were under influence of liquor. On the next day, i.e. 2.3.2023, again, applicants came there and abused the wife of the informant. The father of the informant informed the informant that applicants have humiliated her and, thereafter, she went inside the bedroom, locked the bedroom from inside, and committed suicide by hanging herself. On the basis of the said report, the police have registered the crime against applicants.

[4] Learned Senior Counsel for applicants submitted that to attract offence under Section 306 of the IPC, the prosecution has to prima facie establish that there was "abetment" to the deceased to commit suicide. Even accepting the prosecution case as it is, there is no "instigation" or "aid" and, therefore, the offence of "abetment" is not made out. He submitted that there may be a reason to the deceased to commit suicide as her activities came to knowledge of her father-in-law. He submitted that entire statements of witnesses nowhere disclose "instigation", in the form of "humiliation", and at the hands of applicants, the deceased has committed suicide. There is nothing on record to show that in what manner, applicants could be said to have "instigated" the deceased that ultimately led her to commit suicide. The law governing Section 306 of the IPC is well settled. The basic ingredients to constitute offence under Section 306 of the IPC are, "suicidal death" and "abetment." Section 306 of the IPC talks about "abetment of suicide" and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine. In order to attract the offence of "abetment", there must be mens rea. Without knowledge or intention, there cannot be any "abetment". The knowledge and intention must relate to the act said to be abetted, which in this case are absent and for all above these grounds, the application deserves to be allowed.

[5] Per contra, learned Additional Public Prosecutor for the State strongly opposed the application and submitted that the statement of the informant as well as other witnesses reveals that there was requisite mens rea and obviously, it is a matter of

evidence. He submitted that statements of witnesses itself show that the deceased was humiliated in public, which is sufficient to infer that there was "abetment" at the hands of applicants and thereby she has committed suicide. She was referred by applicants as "prostitute." Thus, there was "humiliation" of the deceased by raising doubt about her character and, therefore, she has committed suicide. At this stage, there is a sufficient material to connect applicants with the alleged offence.

[6] After hearing both sides and perusing the material collected during the investigation, before entering into the merits of the case, it is necessary to see, what are considerations as far as offence under Section 306 of the IPC is concerned.

[7] Section 306 (Section 108 of the Bharatiya Nyaya Sanhita, 2023) of the IPC defines "abetment of suicide", which reads thus:

"306. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Classification of offence. - The offence under this section is cognizable, non-bailable, non-compoundable and triable by Court of Session".

[8] Section 107 of the IPC (Section 45 of the Bharatiya Nyaya Sanhita, 2023) defines abetment of a thing, which reads thus:

"107. Abetment of a thing. A person abets the doing of a thing, who-

First.-Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act".

[9] Section 108 of the IPC reads thus:

"108. Abettor.-

A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by

law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1. The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.- To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations

(a) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.- It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations

(a) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence, if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act in the absence of A and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c) A instigates B to set fire to a dwellinghouse, B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment, provided for that offence.

(d) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith, believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.- The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and, as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.- It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Illustration

A concert with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C' has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section and is liable to the punishment for murder".

[10] Section 306 of the IPC talks about "abetment of suicide" and states that whoever abets the commission of suicide of another person, he/she shall be punished with imprisonment of either description for a term not exceeding ten years and shall also be liable to fine.

[11] A question arises as to when a person is said to have instigated another. The word "instigate" means to goad or urge forward provoke, incite or encourage to do "an act" which the person otherwise would not have done.

[12] It is well settled that in order to amount to an "abetment", there must be mens rea. Without knowledge or intention, there cannot be any "abetment". The knowledge and intention must relate to the act said to be abetted, which in this case are absent. Therefore, in order to constitute "abetment", there must be direct incitement to do culpable act.

[13] In the case of **Prabhu vs. The State represented by the Inspector of Police and anr, SLP [Cri] Diary No. 39981/2022, decided on 30.01.2024**, by referring the various earlier decisions, the Hon'ble Apex Court held that the physical relationship over a considerable period of time was out of mutual love between the appellant and the deceased and not based on the promise of marriage. In the said case, the Hon'ble Apex Court has considered its earlier decision in the case of **Kamlakar vs. State of Karnataka Criminal Appeal No.1485/of 2011, decided on 12.10.2023** and explained ingredients of Section 306 of the IPC and held, as under:

"8.2. Section 306 IPC penalizes abetment of commission of suicide. To charge someone under this Section, the prosecution must prove that the accused played a role

in the suicide. Specifically, the accused's actions must align with one of the three criteria detailed in Section 107 IPC. This means the accused either encouraged the individual to take their life, conspired with others to ensure the person committed suicide, or acted in a way (or failed to act) which directly resulted in the person's suicide.

8.3. In Ramesh Kumar vs. Chattisgarh, 2001 AIR(SC) 383, this Court has analyzed different meanings of "Instigation". The relevant para of the said Judgment is reproduced herein:

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

8.4. The essentials of Section 306 IPC were elucidated by this Court in **M.Mohan vs. State**, 2011 AIR(SC) 1238, as under:

"43. This Court in **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)**, 2009 16 SCC 605: (2010) 3 SCC (Cri) 367 had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word "instigation" and "goad". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there, has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

8.5. The essential ingredients which are to be meted out in order to bring a case under Section 106 IPC were also discussed in **Amalendu Pal alias Jhantu vs. West Bengal**, 2010 AIR(SC) 512, in the following paragraphs:

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.

8.6. On a careful reading of the factual matrix of the instant case and the law regarding Section 306 IPC, there seems to be no proximate link between the marital discord between the deceased and the appellant and her subsequent death by burning herself. The appellant has not committed any positive or direct act to instigate or aid in the commission of suicide by the deceased."

[14] In the light of the above said principles laid down by the Hon'ble Apex Court, it is well settled that to attract the provision, what is to be seen is that the accused have actually instigated or aided the victim in committing suicide. There must be direct or indirect inducement to the commission of suicide and the accused must be shown to have played an active role by an act of instigation or who are doing certain acts to facilitate the commission of suicide.

[15] Applying the above principles to the facts of the present case, recital of the FIR reveals that on 1.3.2023, when the informant was not at home, applicant No.1 entered into the bedroom of the deceased and applicant No.2 was standing beside the room and was referring the deceased as "prostitute" and also assaulted the father of the informant. On the next day also, applicants uttered similar words that, "the deceased is prostitute" in presence of other members of village and, therefore, the deceased felt humiliated. To substantiate the said contention, the investigating officer has recorded statements of various witnesses. The statements of villagers, namely Shashikala Jadhav, Ganesh Rathod, and Kisan Jadhav, also disclose that on 1.3.2023, at about 11:30 pm, they have heard altercations in front of the house of the informant and applicants were abusing the deceased by saying that, "she is prostitute". The similar statements are by other witnesses also.

[16] Thus, it is apparent from statements of witnesses and the statement of the father-in-law of the deceased that the deceased was humiliated by saying that, "she is prostitute" and applicant No.1 entered in her bedroom. As per statements, applicants were under the influence of liquor at the relevant time.

[17] As observed earlier, ingredients to constitute offence under Section 306 of the IPC would stand fulfilled if suicide is committed by deceased due to direct and alarming encouragement/incitement by accused leaving no option but to commit suicide. Further, extreme action of committing suicide is also on account of great disturbance to psychological imbalance of deceased.

This aspect is considered by the Hon'ble Apex Court in the case of Nipun Aneja and Others Vs. State of Uttar Pradesh, 2024 SCC OnLine SC 4091 wherein it has been observed, as under:

"The test that the Court should adopt in this type of cases is to make an endeavour to ascertain on the basis of the materials on record whether there is anything to indicate even prima facie that the accused intended the consequences of the act, i.e., suicide. Over a period of time, the trend of the courts is that such intention can be read into or gathered only after a fullfledged trial. The problem is that the courts just look into the factum of suicide and nothing more. We believe that such understanding on the part of the courts is wrong. It all depends on the nature of the offence & accusation."

[18] In the case of **Ude Singh and ors vs. State of Haryana**, 2019 17 SCC 301, wherein also this aspect is considered by the Hon'ble Apex court and it has been observed, as under:

"16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self- confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances".

[19] In the case of **Praveen Pradhan vs. State of Uttaranchal**, 2012 9 SCC 734, the Hon'ble Apex Court observed, as under:

"A plain and simple reading of this suicide note makes it crystal clear that the appellant had not just humiliated and insulted the deceased on one occasion. In fact, it is evident that the appellant perpetually humiliated, exploited and demoralised the deceased, which hurt his self-respect tremendously. The words used are, to the effect that the appellant always hurt the self-respect of the deceased and he was always scolding him. The appellant always made attempts to force him to resign. The statements recorded by the police under Section 161 Cr.PC., particularly, one made by

Smt. Kavita Singh, widow of the deceased and also those of various other family members, corroborate the version of events, as given in his suicide note".

It has been further observed that, "in fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. Sometimes, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 Cr.P.C".

[20] An indirect influence or an oblique impact which the acts or utterances of accused caused or created in the mind of deceased and which drove her to suicide would be sufficient to constitute the offence of "abetment of suicide".

[21] Coming to the facts of the present case, all that applicants did was, "uttered insulting statement to the deceased in public and humiliated and also demoralized her by attacking her character". The words, allegedly uttered by applicants in public and insulting the deceased in public alone, are sufficient, at this stage, to show that the proximate cause for the deceased to commit suicide was utterances of words by applicants. From statements of witnesses, requisite intention of applicants and mens rea are revealed. As per the case of the prosecution, the deceased was referred as "prostitute" and it demoralized her as well as affected her self-respect and immediately she has committed suicide by hanging herself.

[22] Considering facts and circumstances of the case, we do not think that it is a case which requires any interference by this court at this stage and, therefore, the application deserves to be rejected and the same is rejected accordingly.

[23] Fees of learned counsel Mrs.K.E.Meshram appointed for non-applicant No.2 are quantified and the same be paid to him as per rules.

Application stands **disposed of**

2026(1)McrJ9

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

(Hon'ble Judge: Anil L Pansare; Raj D Wakode)

Criminal Appeal No 456 of 2021, 528 of 2021 **dated 17/12/2025**

Rahul S/o Devidas Mahapure; Vitthal S/o Ramkisan Dhanwate

Versus

State of Maharashtra

HOMICIDE OR SUICIDE

Indian Penal Code, 1860 Sec. 34, Sec. 302 - Code of Criminal Procedure, 1973 Sec. 161 - Evidence Act, 1872 Sec. 27 - Homicide or Suicide - Appellants convicted for murder of deceased based on eyewitness account and confession - Prosecution alleged homicidal death by hanging - Defence argued it was suicide and delay in recording statements created doubt - Court examined medical and circumstantial evidence - Found inconsistencies between postmortem report and prosecution version - Eyewitness statements recorded after long delay and lacked credibility - Memorandum and seizure panchanamas found unreliable - Court held prosecution failed to prove guilt beyond reasonable doubt - Benefit of doubt extended - Conviction set aside - Accused acquitted and ordered to be released - Appeals Allowed

Law Point: Delay in recording eyewitness statements and lack of corroborative evidence render homicide charge unsustainable - Suspicion cannot replace proof beyond reasonable doubt in criminal trial.

Acts Referred:

Indian Penal Code, 1860 Sec. 34, Sec. 302
Code of Criminal Procedure, 1973 Sec. 161
Evidence Act, 1872 Sec. 27

Counsel:

R M Daga, A M Kukday, K R Lule

JUDGEMENT

Raj D. Wakode , J.- [1] Both these appeals arise out of the judgment dated 04.10.2021 passed by the learned Sessions Judge, Buldana in Sessions Case No.83 of 2016. The appellants in both the present appeals were original accused No.1 and accused No.2 in First Information Report No.0134 of 2016 registered by the respondent - Police Station, Amdapur, District Buldana, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as, "the IPC").

[2] Both the accused are convicted by the learned Sessions Court for the offence punishable under Section 302 read with Section 34 of the IPC and are sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.10,000/-, in-default to further undergo simple imprisonment of one year. Thus, both the present appeals are being decided by the common judgment.

[3] The appellants herein were prosecuted and charged by the learned Sessions Court for committing murder of one Vinod @ Bablu Sadashiv Mahapure on 31.03.2016 between 01:00 and 01:30 hours in the premises of Cotton Market of Amdapur, Taluka Chikhli, District Buldana. The case of the prosecution was that deceased Vinod Sadashiv Mahapure was paid Rs.8 lakh by the appellant - Rahul Devidas Mahapure in Criminal Appeal No.456 of 2021 (hereinafter referred to as, "the

accused No.1") for selling the property. However, deceased Vinod did not execute the conveyance in favour of the accused No.1 and hence, the accused No.1 with the help of appellant - Vitthal Ramkisan Dhanwate (hereinafter referred to as, "the accused No.2") in Criminal Appeal No.528 of 2021 committed the murder of Vinod Sadashiv Mahapure by hanging him.

[4] The prosecution case was based upon the direct evidence i.e. on the basis of two eyewitnesses namely Gajanan Sonaji Chopade - PW-6 and Ravindra @ Amol Ambadas Pakhare - PW-10. These two eyewitnesses had deposed before the learned Sessions Court that they had seen the present appellants i.e. accused Nos.1 and 2 committing murder of deceased Vinod. The learned Sessions Court also held that the aforesaid evidence was supported by the medical evidence so also by the oral evidence of PW-5, Sima Vinod Mahapure, PW-7, Bharat Sugdeo Khandalkar, PW-8, Parmeshwar Madhukar Deulkar, PW-21, Milind Shivajirao Pathak and PW-22, Nishant Shankarrao Meshram and other witnesses. Thus, the learned Sessions Court has convicted the accused Nos.1 and 2 relying upon the aforesaid evidence and has sentenced them to suffer life imprisonment.

[5] Being aggrieved by the aforesaid conviction and punishment, the accused Nos.1 and 2 have approached this Court assailing the impugned judgment dated 04.10.2021 passed by the learned Sessions Judge, Buldana in Sessions Case No.83 of 2016.

[6] We have heard Shri. R. M. Daga, learned counsel for appellant in Criminal Appeal No.456 of 2021, Shri. Amit Kukday, learned counsel appointed for appellant in Criminal Appeal No.528 of 2021 and Shri. K. R. Lule, learned Additional Public Prosecutor for respondent/State in both the appeals.

[7] We have gone through the evidence, the documents on record and the impugned judgment dated 04.10.2021. We will refer to the same to the extent if necessary to decide the following points arise for our consideration. We have recorded our findings thereon for the reasons to follow:

Sr. No.	Points	Finding
i)	Does the prosecution prove that deceased Vinod Sadashiv Mahapure died homicidal death?	In the affirmative
ii)	Does the prosecution prove that the accused Nos.1 and 2 in furtherance of common intention, did commit murder by intentionally or knowingly causing death of Vinod Sadashiv Mahapure and thereby committed an offence punishable under Section 302 read with Section 34 of the IPC ?	In the negative
iii)	Whether inference is called for in the impugned judgment?	In the affirmative
iv)	What order ?	Appeals allowed.

[8] Reasons:**As to point Nos.(i) to (iii):**

Deceased Vinod Sadashiv Mahapure was found hanging from the tree near Cotton Market Godown on 31.03.2016 at about 06:00 a.m. Accordingly, PW-1, Prashant Jagannath Pathare, had lodged an oral report below Exhibit - 52 at page No.22 informing the respondent - Police Station Amdapur, District Buldana that Vinod Sadashiv Mahapure had committed suicide. The respondent - Police Station Amdapur, District Buldana registered A.D. Case No.14 of 2016. The respondent had conducted the inquest panchanama of deceased Vinod and so also the postmortem examination. The doctor who conducted the postmortem examination was examined by the prosecution as PW-18, Dr. Mina Dilip Kasare, who deposed that the postmortem examination revealed that the injuries were ante-mortem in nature and were mentioned in column No.17 as below:

"(i) Ligature mark reddish brown in colour, 18 Inch in length and 1/2 Inch in width, running between nose and upper lip anteriorly and running slightly obliquely upward and backward upto behind right ear,

(ii) Slight abrasion to lips with haemorrhage,

(iii) Abrasion on abdomen right side of lateral aspect, just below lower rib of size 4 cm. X 2 cm.,

(iv) Abrasion on back right scapular area of size 2 cm. X 2 cm."

[9] The aforesaid injuries mentioned in column No.17 were corroborated by the corresponding findings relating to the internal injuries noted in column No.19 and the doctor opined that the cause of death was asphyxia due to hanging. The learned Sessions Court had observed that nothing fruitful was elicited in the cross-examination so as to disbelieve the testimony of PW-18, Dr. Mina Dilip Kasare, and her opinion that the death was homicidal. Even otherwise, the ligature mark on the body of the deceased was described by PW-18 as running in between the nose and the upper lip and such a ligature mark would not be possible if a person hangs himself while committing suicide. There was no ligature mark on the neck of deceased Vinod. This fact clearly proves that the death of deceased Vinod was neither suicidal nor accidental, but homicidal. Accordingly, issue No.1 is answered in affirmative.

[10] Once it is held that the death of deceased was homicidal, the next question arises as to who has committed the murder of deceased Vinod Sadashiv Mahapure. The learned Sessions Court, relying upon the prosecution's evidence, has come to the conclusion that accused Nos.1 and 2 have committed the murder of deceased Vinod and accordingly has convicted them for the offence of murder. However, we will examine the aforesaid evidence on the basis of which such conclusion was drawn by the learned Sessions Court, and accordingly, address the issue No. 2.

[11] Deceased Vinod Sadashiv Mahapure was found hanging from the tree on 31.03.2016 at around 06:00 a.m. in the morning. PW-1, Prashant Jagannath Pathare, has

deposed before the learned Sessions Court that he had lodged an oral report (Exhibit - 52) on 31.03.2016 with respondent. The aforesaid report was of suicide and accordingly, the respondent has initially investigated the matter from the point of view of suicide. The inquest panchanama at Exhibit - 57 at record page No.33 also clearly mentions that the dead body was hanging from the tree and the snare was between the nose and upper lip. There were no substantial injuries on the body of deceased Vinod except two abrasions. The postmortem report at Exhibit-99, record page No.118, also indicates that the cause of death was asphyxia due to hanging. From 31.03.2016 to 09.06.2016, when the second oral complaint was lodged by PW-3, Rameshwar Gangadhar Jaybhaye, the respondent treated the aforesaid case as a case of suicide. On 09.06.2016, the First Information Report No.0134 of 2016 came to be registered against the accused Nos.1 and 2 for the offence punishable under Section 302 read with Section 34 of the IPC for committing homicide of the deceased and accordingly, the respondent started investigation from the point of view of homicide.

[12] Immediately, on the same day i.e. on 09.06.2016, the present accused Nos.1 and 2 were arrested. On 15.06.2016, the memorandum panchanama under Section 27 of the Indian Evidence Act, 1872, was drawn which is at Exhibit-69, record page No.62, wherein the accused No.1, Rahul Devidas Mahapure, confessed to his offence and informed as to how, with the help of accused No.2, Vitthal Ramkisan Dhanwate, he committed murder of deceased Vinod Sadashiv Mahapure. He also pointed out the spot of tin shade where he had kept a rope and the tablet which he used for sedating the deceased. On the basis of aforesaid memorandum panchanama, a seizure panchanama was also conducted which is at Exhibit - 71, at record page No.64.

[13] Thus, the fact remains that it was only after 09.06.2016 that the respondent started investigating the matter from a homicidal angle. The present case connects accused Nos.1 and 2 to the crime on the basis of the testimony of two eyewitnesses i.e. PW-6 and PW-10, apart from the aforesaid memorandum panchanama, seizure reports and other witnesses. The learned Sessions Court, in para No.33 of the impugned judgment, has itself recorded that the statements of the aforesaid eyewitnesses under Section 161 of the Code of Criminal Procedure were recorded for the first time on 09.06.2016, and supplementary statements on 04.10.2016. The eyewitnesses, being residents of the said village, were personally knowing deceased Vinod so also the accused persons and still they took almost three months time to inform the aforesaid incident to the respondent Police Station.

[14] The second eyewitness i.e. PW-10, Ravindra @ Amol Ambadas Pakhare, has deposed in his examination in-chief that on 31.03.2016, he went to the alleged spot at 07:00 to 07:30 a.m. wherein the mob and police officials were gathered. He also attended the funeral of the deceased and in the funeral, relatives of the deceased were present. However, he has not informed about the incident to either to the relatives or to the police. The aforesaid conduct of PW-10 is unnatural. Similar is the case with PW-6 Gajanan Sonaji Chopade. The prosecution's witness PW-21, Milind Shivajirao Pathak,

in his evidence, has admitted in his cross-examination that prior to recording of the statements of the aforesaid two witnesses by him, the statements of the aforesaid witnesses were recorded four months earlier by Shri. Meshram. He further admitted the fact that the aforesaid incident which was narrated by the witnesses to him were not stated by the aforesaid witnesses in their earlier statements.

[15] Thus, the fact remains that both eyewitnesses had an occasion from 31.03.2016 to 09.06.2016 to inform the police about the aforesaid incident, but neither they on their own nor after interrogation by the respondent, had informed the aforesaid fact to the authorities of having witnessed the crime. Such conduct by the aforesaid eyewitnesses, i.e., PW-6 and PW-10, raises serious doubts regarding their veracity. The aforesaid doubt is further increased by the fact that they did not inform the aforesaid incident to the police on 09.06.2016 also but on 04.10.2016 for the first time and thus, in our opinion, the aforesaid two eyewitnesses lose their veracity for the inordinate delay in informing the aforesaid incident to the police. In our opinion, such delay is extremely detrimental to the prosecution's case.

[16] The fact further remains that the sequence of evidence as narrated by the aforesaid eyewitnesses as to how the murder of deceased Vinod was committed by the present accused Nos.1 and 2 also varies. PW-6, in his examination-in-chief, has narrated the sequence as below:

"Thereafter Vitthal climbed on the Neem tree; he tied the rope on the branch of tree. Thereafter both of them removed one person from the vehicle. Thereafter all the three persons climbed on the bonnet and Rahul and Vitthal put the snare ([1]) in the neck of that person. After that, both of them alighted from the bonnet. Thereafter Rahul moved the vehicle ahead and stopped at some distance and came back and Rahul pulled the legs of person hung on the Neem tree."

[17] Whereas, the another eyewitness i.e. PW-10, Ravindra @ Amol Ambadas Pakhare, has deposed the aforesaid sequence in his examination-in-chief as below:

"Around 12-00 to 12-30 night, we were coming from hotel. On Amdapur - Undri road, on left side there is a shed of Rahul Mahapure. Near that shed, one white colour Tavera vehicle was stationed. The lights of vehicle were on. On driver's seat, Rahul Mahapure was there. On middle seat, somebody was there. We moved our motor cycle ahead. We stopped at a some distance for urination. After some time, that Tavera vehicle went and stopped near to the Neem tree in Cotton Market. The lights of the vehicle were on. Rahul was on driver seat; one person was beside him. Both the persons alighted from the vehicle. The doors of vehicle were opened. The person on the middle seat was removed from the vehicle. That person was caused to stand near the vehicle. We felt that the said person was Bablu Mahapure. Firstly, Bablu Mahapure was pulled on the vehicle; thereafter he was hanged on the Neem tree. Thereafter those two persons jumped from the vehicle. The vehicle was moved ahead. The lights of the vehicle were off. Thereafter both the persons came and pulled the hands and legs of Bablu. We saw Bablu Mahapure was hanged."

[18] Thus, there is a serious variance in the aforesaid sequence of events. Apart from the omissions brought on record by the defence, such improvements raise serious doubts about the credibility of the aforesaid alleged eyewitnesses. The presence of the aforesaid two eyewitnesses in the midnight at around 01:30 a.m. appears, in our view, to be unnatural. PW-6, Gajanan Chopade, and PW-10, Ravindra Pakhare, both deposed that they had been to one hotel named Yash Hotel on Undri Road for dinner. They had dinner until approximately 12:15 a.m. in the night and then they started returning back to their residence from the said hotel and in that span of period, they saw the incident. It is worth to mention here that the prosecution has not examined the owner of Yash Hotel to prove the aforesaid fact. Both witnesses, on a specific question put to them during cross-examination, admitted that they have neither submitted the bill of their visit to the hotel to the police nor produced it on the day of their deposition. Thus, the aforesaid failure of the prosecution to substantiate the reason for the presence of the aforesaid two eyewitnesses in the midnight at the spot of incidence makes their presence unnatural and raises doubt about their testimony.

[19] Pw-6, Gajanan Chopade, in his examination-in-chief, himself deposed that he saw the incident from a distance of approximately 1200 meters, which is highly improbable in the midnight at the spot of incident, where there was no source of light. The alleged source of light, as claimed by the witnesses, was the headlights of the Tavera vehicle, which were allegedly on. However, the investigating officer, PW-22, Nishant Meshram, during his crossexamination, specifically admitted that he had not prepared a separate panchanama regarding the vehicle's lamp or verified that it was in working condition. Thus, both the source of light so also the presence of the eyewitnesses at the time of the incident comes under cloud.

[20] Pw-6, Gajanan Chopade, in his cross-examination, had specifically admitted that his first statement was recorded by the police after two to three days of the incident. The fact remains that, at the very first instance, he has not stated anything about witnessing the murder of deceased Vinod at the hands of the present appellants. Therefore, it would not be justified to rely upon the evidence of such eyewitnesses for convicting the present appellants. A similar situation arises with PW-10, Ravindra Pakhare, who deposed in his examination-in-chief that he was present at the spot of incident the next morning at around 7:00 a.m., along with other people and police officials gathered there and still he did not inform anyone about the incident at that time. He has specifically admitted in his crossexamination that he had told the incident to the police for the first time on 10.06.2016. He has also admitted in his cross-examination that he has not obtained any bill from the hotel where he had been with PW-6, Gajanan Chopade. Thus, in our considered opinion, the learned Sessions Court has committed a grave error in law in relying upon the evidence of these two eyewitnesses, whose conduct, presence, and depositions were unnatural and contradictory. Hence, the impugned judgment deserves to be quashed and set aside on this ground alone.

[21] The learned Sessions Court has also relied upon the evidence of PW-5, Sima Vinod Mahapure, the wife of deceased Vinod, who deposed that her husband had received a telephone call on 30.03.2016 at around 7:00 p.m. When she enquired as to who had called, he initially stated that it was Vitthal Dhanwate, i.e., accused No.2, and thereafter stated that it was Rahul Mahapure, i.e., accused No.1. The learned Sessions Court has also relied upon the oral complaint lodged by her on 02.04.2016 with the respondent police station, alleging the homicide of her husband. The aforesaid complaint dated 02.04.2016 is at Exhibit-74. While accepting the evidence of PW-5 regarding the alleged telephone call made by the present appellants to her husband on 30.03.2016, the learned Sessions Court completely ignored the fact that she failed to disclose this material fact to the police in her complaint at Exhibit-74. Further, the fact remains that if the deceased had indeed received the last phone call from the present appellants in the presence of PW-5, she would have, in the normal course of human conduct, raised suspicion against the present appellants in the said oral complaint. However, Exhibit-74 clearly alleges that some unknown person had committed the murder of her husband, which materially contradicts her subsequent deposition.

[22] The learned Sessions Court has relied upon the prosecution theory as to the motive about dispute between accused No.1 and deceased Vinod. In paragraph 46 of the impugned judgment, the learned Sessions Court specifically observed that the deceased had received an amount of Rs.8 lakh from accused No.1, Rahul Mahapure, towards sale of property, but deceased had not conveyed the property to accused No.1 and therefore, held that the motive for eliminating the deceased appeared to be probable. However, PW-5, Sima Vinod Mahapure, in her cross-examination, has specifically admitted that for the last eighteen years, accused No.1, Rahul Mahapure and her husband were not on talking terms. This admission speaks volumes and renders the alleged motive highly improbable, if not impossible. The learned Sessions Court also ignored the fact that the investigating officer, PW-22, Nishant Meshram, specifically admitted in his cross-examination that he had not seized any document relating to the said transaction. He further admitted that he neither collected any evidence nor placed before the Court any material to show in whose presence the alleged transaction was conducted. Thus, the learned Sessions Court was not justified in relying upon the aforesaid alleged motive for convicting the present appellants.

[23] Another piece of evidence on which the learned Sessions Court has relied in accepting the prosecution theory about the guilt of the accused is the testimony of PW-7, Bharat Sugdeo Khandalkar. PW-7 deposed that on 30.03.2016, he was present at his egg-snack cart and that at around 7:00 p.m., accused No.1 purchased three omelettes from him. He further deposed that accused No.2 added 'eating acid' ([2]) to one of the omelettes. According to the prosecution case, accused No.1 had prepared powder from one tablet and mixed it in the omelette of the deceased, and the said tablet allegedly acted as a sedative, as a result of which deceased Vinod, fell asleep during the commission of the offence. The aforesaid evidence of PW-7 was, according to the

learned Sessions Court, corroborated by the memorandum panchanama of accused No.1 at Exhibit-69, as well as the seizure panchanama at Exhibit-72, under which one tablet was seized from the tin shed of accused No.1. The CA report at Exhibit-100 also confirms that the said tablet was Lorazepam, a tranquilizer. However, the learned Sessions Court completely ignored the evidence of PW-18, Dr. Mina Dilip Kasare, who conducted the postmortem examination and who, after referring to column No.21, admitted that at the time of postmortem, she had not felt any smell of Lorazepam or any antibacterial or tranquilizing substance. The postmortem report at Exhibit-29, particularly column No.21, corroborates this opinion and does not record the presence of any such chemical substance.

[24] In view of the above, the evidence of PW-7, so also the memorandum panchanama, seizure panchanama and chemical analyzer report, in our considered view, lose their significance and did not connect the present appellants with the offence. Thus, in our considered opinion, the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. As regards the remaining witnesses, their evidence does not materially advance the prosecution case and is merely formal in nature.

[25] The evidence of PW-11, Dhananjay Mohite, is of no use. PW-13, Rameshwar Sawle, is a formal witness, who has drawn spot map (Exh.86).

[26] Thereafter the prosecution has examined PW-14, Sachin Dedhe, who has asseverated that he was administered a tablet in the omelet; he felt the test was bitterish; thereafter he felt giddiness; and on the next day, he was taken by accused No.1 to his house. What exactly the prosecution wanted to show, cannot be ascertained from the evidence of this witness. Hence, much weight-age cannot be given to the evidence of this witness.

[27] Thereafter, prosecution has examined PW-15, Khurshid Jafarbaig, who is owner of the Tavera vehicle. She asseverated that deceased was serving as driver with her, on Tavera vehicle since last 5 to 6 years. She has asseverated that lastly the deceased had taken the vehicle from her custody and did not return till the news of hanging was heard by them on the next day.

[28] Thereafter, prosecution has examined PW-16, Dnyaneshwar Mahale at Exh.91, through whom the panchanamas of seizure of mobiles were proved vide Exhibits - 92, 93 and 94. The panchanamas of mobiles, seizure of the vehicle of the accused were prepared vide Exhibits - 92, 93 and 94.

[29] Pw-19, Sawairam Rathod, is the carrier of muddemal vide letter Exhibits - 105, 106 and 107. The report of Forensic Science Laboratory is received at Exhibit - 100, wherein it was found the tablets which were seized and sent for examination was found be drowsy tablets, "Lorazepam, tranquilizer and Ceftriaxone (an antibacterial injection) was detected.

[30] In our considered opinion, the conviction was based on evidence that did not establish the involvement of the appellants in the crime beyond reasonable doubt. We

find that the learned Sessions Court convicted the present appellants on the basis of strong suspicion created against them by the prosecution from the evidence collected; however, it is a long-standing principle settled by the Hon'ble Supreme Court that suspicion, however strong, cannot take the place of proof. Accordingly, the point No.(i) is answered in the affirmative. The point No.(ii) is answered in the negative and point No.(iii) is answered in the affirmative. The appeals are allowed in answer to point No.(iv).

[31] In view of the aforesaid discussion and the evidence on record, both documentary and oral, the impugned judgment and order dated 04.10.2021 is liable to be quashed and set aside. We, therefore, proceed to pass the following order:

ORDER

- i) The present criminal appeals are **allowed**.
- ii) The impugned judgment and order dated 04.10.2021 passed in Sessions Case No.83 of 2016 by the learned Sessions Judge, Buldana, is hereby quashed and set aside.
- iii) The appellants namely "Rahul Devidas Mahapure" in Criminal Appeal No.456 of 2021 and "Vitthal Ramkisan Dhanwate" in Criminal Appeal No.528 of 2021, are hereby acquitted of the offence punishable under Section 302 read with Section 34 of the IPC.
- iv) The appellant in Criminal Appeal No.528 of 2021 viz. Vitthal Ramkisan Dhanwate shall be released forthwith, if not required in any other case.
- v) The appellant in Criminal Appeal No.456 of 2021 viz. Rahul Devidas Mahapure was released on bail by suspending his sentence by this Court vide order dated 16.04.2024 in Criminal Application No.910 of 2023. The bail bond furnished by him shall stand cancelled.

[32] The fees of the appointed learned counsel Shri. Amit M. Kukday appearing in Criminal Appeal No.528 of 2021 be quantified and paid as per Rules

2026(1)MCrJ18

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: N J Jamadar)

Criminal Application No 568 of 2024 **dated 16/12/2025**

Sanjay Pandurang Singhan

Versus

State of Maharashtra and Anr

OUTRAGING MODESTY ALLEGATION

Indian Penal Code, 1860 Sec. 354 - Code of Criminal Procedure, 1973 Sec. 482, Sec. 164, Sec. 155, Sec. 173 - Outraging Modesty Allegation - Applicant sought quashing of criminal proceedings for offence under Sec. 354 IPC - Allegation arose after a political meeting where complainant claimed applicant touched her chest and insulted her - Initial non-cognizable report recorded for assault and threat without mention of outraging modesty - Subsequent FIR filed adding Sec. 354 - Applicant contended FIR was malafide and investigation without Magistrate's permission violated Sec. 155(2) CrPC - Majority of witnesses did not support prosecution version - Only one witness marginally supported complaint - Court noted omission in first report was material and subsequent FIR appeared afterthought - Held police could not investigate non-cognizable offence without Magistrate's order - Continuation of prosecution constituted abuse of process - Criminal Proceedings Quashed

Law Point: When initial complaint discloses only non-cognizable offences, police cannot investigate or register FIR for cognizable offences without prior Magistrate approval under Sec. 155(2) CrPC, and delayed allegations of outraging modesty without initial mention are unreliable.

Acts Referred:

Indian Penal Code, 1860 Sec. 354

Code of Criminal Procedure, 1973 Sec. 482, Sec. 164, Sec. 155, Sec. 173

Counsel:

Viral Rathod, Shivani Shinde, R S Tendulkar, Sahil Choudhari, Devidas Pokale

JUDGEMENT

N.J.Jamadar, J.- [1] By this application under Section 482 of the Code of Criminal Procedure, 1973 ('the Code'), the Applicant seeks quashing of the Criminal Proceedings being CC No.1171/PW/2024, arising out of C.R.No.213 of 2024 registered at Kasturba Marg Police Station, and the order of cognizance dated 5 March 2025 passed by the learned Magistrate, 68th Court, Borivali, Mumbai, thereby issuing the process against the Applicant for an offence punishable under Section 354 of the Indian Penal Code, 1860 ('the Penal Code').

[2] Shorn of unnecessary details, the background facts leading to this application can be stated as under:

2.1 The Applicant is a social worker and husband of a former Corporator affiliated to a police party. The first informant (R2) was also holding the office of the Deputy Chief of a local unit of the said political party. On 12 March 2023, a meeting of the workers of the said local unit was organized at Garden Hall, Near Phulpakharu Ground, Devipada, Borivali. After the meeting was over, the first informant (R2) was discussing the issues with Mrs. Madhuri Khanvilkar, a Coordinator of the local Unit of the said political party, in the presence of other workers. The first informant made a grievance

that some office-bearers of the political party were calling the ladies for meetings, though their presence was not required, and, thereby sabotaging the meeting convened for the redevelopment of Rehman Chawl and Ganesh Compound SRA projects.

2.2 The first informant alleged, the applicant, whom she had known from before, overheard the said conversation between the first informant and Mrs. Khanvilkar, and charged on the person of the first informant, proclaimed that he had not taken any bribe from anybody and pushed the first informant back by touching her chest. The applicant allegedly exhorted that the first informant was required to be taught a lesson. The first informant felt that her modesty was outraged. Hence, the first informant lodged a report leading to the registration of C.R.No.213 of 2024 at Kasturba Marg Police Station.

2.3 Post completion of investigation, during the course of which the Investigation Officer recorded statements of as many as 59 witnesses, who were allegedly present in the said meeting, chargesheet came to be lodged against the applicant for an offence punishable under Section 354 of the Penal Code.

[3] The Applicant has preferred this application asserting, inter alia, that the first informant had lodged a report with a view to wreck vengeance. The continuation of the prosecution constitutes abuse of the process of the Court as in the initial non-cognizable report lodged by the first informant, there was no whisper about the alleged act of outraging the modesty of the first informant (R2), attributed to the applicant. As a non-cognizable case for the offences punishable under Sections 506, 323 of the Penal Code was registered on 12 March 2024, the IO could not have registered FIR and proceeded with the investigation without obtaining the orders of the Magistrate under Section 155(2) of the Code, 1973. The initiation of the prosecution was clearly malafide, and, thus, resultant proceeding deserves to be quashed and set aside.

[4] I have heard Mr. Rathod, learned Counsel for the Applicant, Mrs. Tendulkar, learned APP for the State, and Mr. Sahil Choudhary, learned Counsel for the first informant (R2), at some length. With the assistance of the learned Counsel for the parties, I have also perused the report under Section 173 of the Code and the documents annexed thereto, including the statements of the first informant and the witnesses.

[5] Mr. Rathod, learned Counsel for the Applicant, would urge that, the prosecution of the Applicant is a classic case of abuse of the process of Court. Laying emphasis on the fact that, in the NC complaint, which was lodged almost instantaneously, there was no reference at all to the alleged acts of outraging the modesty of the first informant, it was urged that, once a NC complaint, on the basis of the statement made by the first informant (R2) before the Police was registered, if the Police intended to further investigate into the matter, permission of the Magistrate under Section 155(2) of the Code, 1973, was indispensable. The IO could not have circumvented the mandatory procedure by registering the FIR on the next day on the basis of motivated and trumped up allegations. To lend support to this submission,

Mr. Rathod placed reliance on a Division Bench judgment of this Court in the case of Asif Khan Pathan V/s. State through PP and Ors., 2023 SCC Online Bom 2217.

[6] As a second limb of the submission, Mr. Rathod would urge that, even if the report filed by the IO under Section 173 of the Code and the documents annexed with it, is taken at its face value, no offence under Section 354 of the Code, can be said to have been made out, as many as 58 out of 59 witnesses have completely disowned the prosecution version. Even Mrs. Khanvilkar, who was stated to be the prime witness, did not support the prosecution version. Therefore, continuation of the criminal proceeding, which is ex-facie initiated with an ulterior motive for wrecking vengeance, would defeat the ends of justice.

[7] Per contra, Mrs. Tendulkar, learned APP for the State, submitted that, the statement of Mrs. Soni, one of the witnesses examined by the IO, lends support to the claim of the first informant. Moreover, in her statement recorded under Section 164 of the Code, before the learned Magistrate, the first informant has reiterated the allegations against the Applicant. Therefore, the veracity of the allegations must be left to be determined at the trial, though no other eye witness has supported the version of the first informant (R2).

[8] Mr. Choudhary, learned Counsel for Respondent No.2, supplemented the submissions of Mrs. Tendulkar. It was submitted that, what the Applicant wants this Court to do is, to evaluate the veracity of the statements of the majority of the witnesses, who have not supported the first informant, and the sole witness, who has supported the first informant's version. At this stage, the said exercise is legally impermissible, submitted Mr. Choudhary. Since in her examination under Section 164 of the Code, before the learned Magistrate, the first informant (R2) has stood by her allegations, the issue must await adjudication at the trial. Therefore, the application does not deserve countenance, at this stage.

[9] At the outset, it is necessary to note that there is not much controversy over the circumstances in which the offence was allegedly committed by the applicant. The first informant was allegedly enraged on account of the conduct of the office bearers of the political party including the applicant. The presence of the applicant, Respondent No.2 and other office bearers, including Mrs. Khanvilkar, at the time and place of the occurrence, appears rather incontestable. At the heart of the matter is the events which allegedly unfolded after the meeting of the political party was over. What the first informant reported at the first instance, assumes critical salience.

[10] On 12 March 2024, under two hours of the alleged occurrence, the first informant approached Kasturba Marg Police Station and reported that, while the first informant was relating grievance to Mrs. Khanvilkar, the Applicant approached her; manhandled and assaulted her and threatened her with dire consequences.

[11] Evidently, the first informant did not report about the assault or use of criminal force by the applicant with intention or knowledge of outraging her modesty. It was not reported that the Applicant had pushed the first informant back by touching

her chest. Thus, the Police recorded NC report for the offences punishable under Sections 506 and 323 of the Penal Code. The omission to make the allegations in relation to outraging the modesty of the first informant on the day of occurrence, especially when the matter was reported to the Police under two hours thereof, cannot be said to be inconsequential or immaterial. The act attributed to the applicant in the FIR was such a notorious fact that the first informant could not have missed to state the same at the first possible opportunity. The omission to make the allegations of outraging the modesty in the report lodged immediately after the occurrence, renders the subsequent act by lodging report susceptible to attack on the ground that those allegations were creature of after-thought and malafide.

[12] The registration of NC report for the offences punishable under Sections 506 and 323 of the Penal Code, has legal implications. In view of the provisions contained in Section 155(2) of the Code, 1973, the IO cannot enter upon investigation without obtaining the permission from the jurisdictional Magistrate. The use of the word 'shall' in sub-section (2) of Section 155 emphasises the negative import that the police officer shall not investigate the non-cognizable case without obtaining orders from the Magistrate having power to try such case.

[13] A profitable reference in this context can be made to a Division Bench judgment of this Court in the case of **Shoeb Arif Memon and Ors. V/s. The State of Maharashtra and Anr.**, 2021 AllMR(Cri) 1864 wherein in somewhat identical factsituation, wherein initially non-cognizable case was registered for the offences punishable under Sections 323, 504, 506 of the Penal Code, and, after 28 days, the first informant alleged commission of the offence punishable under Section 354 also, the Division Bench of this Court was persuaded to quash the proceedings opining that the mandate contained in Section 155(2) of the Code, 1973, was not adhered to. The observations of the Division Bench in paragraph Nos.12 to 14 are material and, hence, extracted below:

"12. We find it difficult to accept the said submission for the reason that any reasonable person, in the position of the husband of respondent No.2 or respondent No.2 herself, would have given details of the alleged actions of the applicants in the incident that occurred on 13th August, 2020 when such person approached the police for the first time to raise a grievance. Not having done so and then approaching the police after 28 days to allege that the applicant had committed offences punishable under Sections 354, 509, 323, 504, 506 read with Section 34 of the IPC demonstrates that respondent No.2 was seeking to give a different colour to the very same incident.

13. It is significant that there is indeed a grudge between the parties for the reason that the applicants have been alleging that husband of respondent No.2, their former employee, had indulged in some misappropriation for which they had sought to confront him. In this backdrop, it becomes clear that the manner in which respondent No.2 chose to approach the police after about 28 days of the incident, when already cross complaints pertaining to non-cognizable offences had been registered by the

applicants and her husband against each other, we are of the opinion that there is substance in the contentions raised on behalf of the applicants.

14. Section 155 (2) of the Cr.P.C. provides that a police officer can investigate a non-cognizable case only upon an order of Magistrate having power to try such a case or commit such a case for trial, thereby indicating that in absence of such an order, the police officer could not have initiated investigation. In a present case, the said mandate does not appear to have been followed."

[14] In the case of **Asif Khan Pathan (supra)**, on which reliance was placed by Mr. Rathod, another Division Bench, again in somewhat similar fact-situation, enunciated the law as under:

39. In *Tulsidas Gopal Naik vs. State of Goa*, 2022 SCCOnlineBom 6691 this Court while dealing with a similar contention and on considering provisions of Section 155 of Cr.P.C., observed in paras 25 and 29 which reads thus:-

"25. Perusal of the above provision clearly goes to show that when the officer in-charge of a police station considers any complaint as non-cognizable and enters or cause to be entered the substance of information in a book to be kept by such officer in such form as the State Government may prescribe and refer the informant to the Magistrate, he is not entitled to investigate into such matter without the order of a Magistrate.

29. It is not an empty formality but certain rights accrue in favour of the said party against whom complaint or allegations are made. The word "shall" used in Sub-section (2) of Section 155 of Cr.P.C. clearly shows the intention of the Legislature and mandate that the police officer shall not investigate a non-cognizable case without orders of the Magistrate having power to try such case. Therefore, once an opinion is formed in writing and conveyed to the informant that his case is non-cognizable case, the in-charge of the police station is certainly precluded from carrying out any further investigation in such non-cognizable case/complaint without the order of the jurisdictional Magistrate. There is a specific purpose for which Sub-section (2) of Section 155 is introduced. Such purpose cannot be taken away only by saying that the officer incharge did not record substance of information of noncognizable case in the book maintained in the police station."

40. In *Tulsidas Gopal Naik (supra)*, it was contended that initially the Police registered a non-cognizable case on receiving the information and directed the informant to approach the Magistrate, but due to some pressure on the police officer from higher authorities, he registered it as a cognizable offence. The facts in the matter in hand are quite similar. The wife of Respondent No.3 went to the Police Station on the day of incident itself and lodged her complaint, which is already reproduced in para 26. This information was considered as non-cognizable case and the informant was advised to approach the proper Court of law under Section 155 of Cr.P.C. On the next date, i.e. on 20.03.2023, Respondent No.3 filed another complaint in connection

with the same incident and by giving some additional information, which Police considered as containing ingredients for registration of cognizable offence.

41. At this stage, it is necessary to note that Respondent No.3 went to the Police Station on the next day even though he very well knew that his wife lodged the complaint on the previous day and that it was registered as a non-cognizable case. The question remains as to whether the wife of Respondent No.3 failed to disclose all the facts to the Police and/or on the other side, the Police failed to record all the facts disclosed by the wife of Respondent No.3 while registering NC complaint. On both counts, the law provides a specific procedure. If the informant was not satisfied with the recording of her complaint by the Police, which is not at all the case put forth in this matter except claiming orally while arguing the matter, the said informant failed to approach the Superintendent of Police under Section 154(3) of Cr.P.C. The only inference is that whatever was disclosed by the wife of Respondent No.3 on 19.03.2023 and considered as non-cognizable case was properly recorded by the Police. The said informant on showing dissatisfaction on recording the information correctly by the Police, ought to have approached the Superintendent of Police with all the details. No such procedure was adopted. Thus, it shows that the Police recorded the information correctly as disclosed by the informant on 19.03.2023, as non-cognizable case.

42. Secondly, when the Police on the next day i.e. on 20.03.2023, received some additional information about the same incident which was provided to them by Respondent No.3, were very well aware that NC complaint is registered in connection with the same incident and thus, was duty-bound to approach the concerned Magistrate under Section 155(2) of Cr.P.C. for permission to investigate. There was no impediment on the investigating agency to approach the concerned Magistrate."

[15] The aforesaid pronouncements appear to be on all four with the facts of the case at hand. In the light of the registration of a non-cognizable case on the day of occurrence for the offences punishable under Sections 323 and 506 of the Penal Code, if at all the Investigating Officer intended to proceed with the investigation, on the basis of the further/supplementary statement of the first informant recorded on 13 March 2024, it was incumbent upon the IO to obtain permission of the jurisdictional Magistrate under Section 155(2) of the Code, 1973. Neither the said course was followed, nor was it a case of the first informant (R2) that on 12 March 2024, she had narrated the incident of outraging her modesty as well, and, yet, the Police did not record the same, and, therefore, she had approached the superior police officer.

[16] The endeavour of the learned APP and the learned Counsel for Respondent No.2 to salvage the position by canvassing a submission that, at this stage, the veracity of the statements of the witnesses cannot be decided, especially when the first informant has stood by her allegations in her statement recorded under Section 164 of the Code, now warrants consideration.

[17] First and foremost, it is pertinent to note that, pursuant to the statement of the first informant recorded on 13 March 2024, a crime has been registered for the offence

punishable under Section 354 only. An indictment of outraging the modesty of the first informant was, thus, sought to be made. Before appreciating as to whether the prosecution was actuated by malice or with a view to wreck vengeance, it may be apposite to keep in view the essential ingredients of the offence punishable under Section 354 of the Penal Code.

[18] From the text of Section 354, it becomes abundantly clear that the linchpin of the offence is, assault or use of criminal force to any woman with intent to outrage the modesty or knowledge that by the said act, the modesty of the woman would be outraged. Evidently, the intention is not the sole element of mens rea. Knowledge that modesty is likely to be outraged is sufficient to constitute the offence, sans intention to outrage the modesty.

[19] A profitable reference in this context can be made to a three Judge Bench Judgment of the Supreme Court in the case of **State of Punjab v/s. Major Singh**, 1967 AIR(SC) 63 wherein the majority enunciated the ingredients of the offence punishable under Section 354 of IPC, as under:

"15. Section 10 of the Indian Penal Code explains that "woman" denotes a female human being of any age. The expression "woman" is used in s. 354 in conformity with this explanation, see s. 7. The offence punishable under s. 354 is an assault on or use of criminal force to a woman with the intention of outraging her modesty or with the knowledge of the likelihood of doing so. The Code does not define "modesty". What then is a woman's modesty ?

16. I think that the essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman Possesses a modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under s. 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anesthesia, she may be sleeping, she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section." (emphasis supplied)

[20] In the case of **Vidyadharan V/s. State of Kerala**, 2004 1 SCC 215 after following the aforesaid pronouncement in the case of **State of Punjab V/s. Major Singh** (supra), the ingredients of the offence punishable under section 354 were spelled out as under:

"9. In order to constitute the offence under Section 354 mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention having such outraged alone for its object. There is no abstract conception of modesty that can apply to all cases. (See **State of Punjab v. Major Singh**, 1967 AIR(SC) 63. A careful approach has to be adopted by the Court while dealing with a case alleging outraged of modesty. The essential ingredients of the offence under Section 354 IPC are as under:

- (i) that the person assaulted must be a woman;

(ii) that the accused must have used criminal force on her, and
(iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty."

(emphasis supplied)

[21] On the aforesaid touchstone, reverting to the facts of the case, the entire setting of the matter deserves to be kept in mind. Evidently, the incident occurred in a hall where a number of workers of the political party had assembled. The first informant was allegedly discussing the issue of redevelopment of the buildings under SRA scheme and made an insinuation that few office bearers of the political party were instrumental in sabotaging the said redevelopment. The overt act attributed to the applicant was that of pushing the first informant back by touching her chest.

[22] In a situation of the present nature, even if the version of the first informant is taken at par, ex-facie, it would be rather hazardous to draw an inference that the alleged act was accompanied with the intention or knowledge to outrage the modesty of the first informant.

[23] Indeed, out of 59 witnesses whose statements have been recorded, 58 witnesses have not supported the first informant and have given a counter version. It is true, at this stage, the Court is not supposed to embark upon an exercise of testing the veracity of the witnesses, in the sense that the reliability of the statement of one witness is weighed against another witness. However, in the totality of the circumstances, if viewed in the context of omission to state the most notorious fact, when the report was lodged under two hours of the occurrence, the statements of more than 50 persons who were present at the time of the alleged occurrence, cannot be simply brushed aside. Even Mrs. Khanvilkar, with whom the first informant allegedly had conversation, completely disowned the version of the first information. The statement made by the first informant under Section 164 of the Code before the learned Magistrate, therefore, cannot be placed on a higher pedestal.

[24] Resultantly, the Court is persuaded to hold that the propositions (1) and (7) in para No.102 of the judgment in the case of State of Haryana V/s. Ch. Bhajan Lal and Ors,1992 Suppl SCC 102335 are attracted to the facts of the case at hand. The continuation of the prosecution would clearly amount to an abuse of the process of the Court. Hence, the Criminal Application deserves to be allowed.

[25] Thus, the following order:

ORDER

- (i) Criminal Application stands allowed in terms of prayer clauses A1 and A2.
- (ii) No costs

2026(1)McrJ27

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

(Hon'ble Judge: Abhay J Mantri)

Criminal Revision Application No 270 of 2025 **dated 16/12/2025**

Sujata W/o Nishant Manwar

Versus

Nishant S/o Ramesh Manwar

MAINTENANCE ENTITLEMENT

Code of Criminal Procedure, 1973 Sec. 125 - Maintenance Entitlement - Wife challenged family court order denying maintenance under Sec. 125 CrPC - Lower court held she suppressed DV proceeding where interim maintenance granted - Applicant argued suppression not deliberate and husband failed to prove ability or her income - Respondent claimed wife educated and capable of earning - Court observed wife disclosed pending DV proceeding and only omitted interim order - Non-disclosure not fatal under beneficial legislation - Husband failed to adduce evidence - Held wife can claim maintenance under multiple statutes but quantum must adjust previous award - Family court erred in dismissing claim solely for non-disclosure - Matter remanded for reconsideration - Revision Partly Allowed

Law Point: Omission to disclose interim maintenance from another proceeding does not bar relief under Sec. 125 CrPC; wife can claim maintenance under different statutes subject to adjustment of amounts previously awarded

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 125

Counsel:

Bharat S Doifode, Y L Bidve, Vijay V Deshmukh

JUDGEMENT

Abhay J. Mantri, J.- [1] Heard. Rule. Rule is made returnable forthwith and heard finally by consent of the learned counsel for the respective parties.

[2] The original applicant, i.e., the wife being aggrieved by the impugned judgment and order dated 27-09-2024, passed by the learned Judge, Family Court, Aurangabad (for short the 'learned Judge') in Petition E-No.98/2021, thereby dismissing the petition filed by the applicant for the grant of maintenance, has preferred this revision application.

[3] The learned advocate for the applicant vehemently contended that the learned Judge has not considered the evidence on record in its proper perspective and erred in

dismissing the petition, holding that the applicant has suppressed the fact of filing of the Domestic Violence Proceeding (for short the D. V. Proceeding) and the grant of interim maintenance from the court. Similarly, the learned Judge has erred in observing that the applicant has miserably failed to prove that the non-applicant failed and neglected to maintain her. However, the applicant is staying separately from him without any reason. Therefore, he urged that the said findings are contrary to the facts on record and liable to be set aside in the revision.

[4] He further argued that though the applicant has taken the education of LLB, she is not a practising advocate. The respondent-husband has not led any evidence to show that she had an independent income to maintain herself. However, the learned Judge has not considered this fact in its proper perspective and erred in dismissing the application. Accordingly, he urged that the application be allowed.

[5] Per contra, the learned advocate for the respondent vehemently opposed the application, contending that the applicant has deliberately suppressed the material facts relating to the previous filing of DV proceedings and receiving the monetary relief by her in the said proceeding, and therefore, the learned Judge has rightly held that the applicant is not entitled to relief. He further canvassed that the applicant failed to prove that the respondent deserted her. But she herself left the house; therefore, the learned Judge has held that she is not entitled to maintenance on that ground. Lastly, he argued that the respondent has Sickle Cell Disease, a severe hereditary disorder and has 40% permanent disability due to said disease. Therefore, he has to spend a huge amount on his medical treatment. He also resigned from his employment in February 2020 and is currently unemployed. On the contrary, the applicant is a Law Graduate and is educated and capable of earning her livelihood. The applicant was employed and earning approximately Rs. 8000/- per month, and also engaged in Law practice. Therefore, she is not entitled to maintenance, and, as such, he submitted that the learned Judge has considered this aspect and rightly dismissed the petition; accordingly, no interference is warranted.

[6] To buttress his submission, he has relied on the following judgments: **K. D. Sharma Vs Steel Authority of India Ltd and others**, 2008 AIR(SCW) 6654, **Sudeep Chaudhary Vs Radha Chaudhary**, 1999 AIR(SC) 536, **Vishal Rajesaheb Gore Vs Sow. Aparna Vishal Gore and others**, 2018 AllMR(Cri) 3399, and **Ranjesh Vs Neha**, Manu/SC/0833/2020 submitted that in view of the law laid down in the above judgments, due to non-disclosure of relevant material facts, the applicant is not entitled to the maintenance and as such, urged for dismissal of the revision application.

[7] Heard the rival contentions of the learned advocate for the parties and gone through the impugned judgment and record as well as the judgments relied on by the learned advocate for the respondent, a short question arises before this court; whether the order of dismissal of the petition/application passed by the learned Judge, Family Court on account of suppression of the material fact of getting interim maintenance in D. V. proceedings is just and proper or it requires interference in revision.

[8] On perusal of the impugned judgment, at the outset, it appears that the learned Judge dismissed the petition solely on the ground that the applicant has suppressed the fact that she has filed the DV Proceeding and getting interim maintenance to her therein and also held that the applicant failed to prove that non-applicant has failed and neglected to maintain her and therefore, rejected the petition.

[9] It is pertinent to note that the respondent appeared before the learned family court and filed a written statement (Exh. 15). He does not dispute his relation with the applicant nor dispute that she is residing separately. He resisted the application on various grounds as observed in para 3 of the impugned judgment. It further reveals that the applicant has filed an affidavit of examination-in-chief (Exh. 17) and also filed a copy of the order passed in PWDVA No. 146/2021. The applicant has also filed an affidavit of disclosure of income, assets, and liabilities as per the direction of the Hon'ble Apex Court in *Ranjesh Vs Neha* (Exh. 6) and other documents and closed her evidence. The respondent has cross-examined her at length. **It is pertinent to note that the respondent failed to adduce any evidence in support of his defence.**

[10] It further emerges that the applicant does not dispute that she is a LLB degree holder and does not dispute that in the DV proceeding, an interim relief of Rs. 2500/- was granted to her, which was challenged by her before the appellate authority.

[11] The respondent, along with his affidavit-in-reply, has filed a copy of the order passed in the DV proceeding on record (Exh. R-1) to demonstrate that in the DV proceeding, an interim maintenance of Rs. 2500/- was granted to her. The said order is of 19-10-2022, i.e. much prior to the passing of the impugned order. As well as the order passed by the learned Addl. Sessions Judge, Aurangabad on 22.02.2024, whereby enhanced maintenance up to Rs. 5,000/-p.m. (Exh. R-2)

[12] The learned Judge in para 9 has observed that, **"Moreover, the applicant has been getting interim maintenance in the D.V. case filed by her. The important factor is that she has challenged the said interim order seeking enhancement in the said amount of interim maintenance. Despite these facts, she has not given any reason as to why she has filed the present petition again seeking maintenance from the non-applicant ."** Said observation appears contrary to the settled position of law as well as the law laid down in para 56 of the *Ranjesh Vs Neha* (supra), relied by the learned advocate for the respondent. I would like to reproduce the same as under:

56. It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Code of Criminal Procedure, or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. **While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account**

the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

[13] Bare perusal of the above para, it appears that a wife can make a claim for maintenance under different statutes, and **there is no bar for filing an application for maintenance under various enactments.** Therefore, the observations appear to be contrary to the law laid down by the Hon'ble Apex Court. Thus, these findings cannot be sustained in the eyes of the law. In para 9 of the impugned order, it is observed that "She has not even disclosed this fact of filing D.V. case to this Court. She has not produced a copy of the interim maintenance order passed by the learned J.M.F.C. Aurangabad. As such, she has suppressed this material fact from this Court". However, this finding appears to be contrary to the facts on record. In para 5, the learned Judge has observed that the applicant has filed a copy of the order passed in PWDVA NO.146/2021. The said filing of the copy itself indicates that the proceeding under PWDVA is pending between the parties. Undisputedly, she has not filed a copy of the order granting interim maintenance in her favour before the court, which she was bound to produce, as her evidence was recorded after 29-05-2023, as observed in para 5 itself. No doubt, as observed by the learned Judge, the parties must come to court with clean hands and disclose all the facts before the court when applying for the grant of maintenance. Similarly, in my view, it was the duty of the respondent also to bring those facts on record by filing relevant documents before the court. But the respondent did not enter into the witness box nor adduce evidence in support of his defence. During the applicant's cross-examination, she was asked only certain questions, to which she admitted that she had received interim maintenance of Rs. 2500/- per month. While considering the above aspect, I would like to reproduce **para 57** of the **Rajnish Vs Neha** (supra) as under:

"57. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the Applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. **If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.**"

[14] Bare perusal of the above, it emerges that the applicant has to disclose the previous maintenance proceeding and the order passed therein, so that the court would take into consideration the maintenance already awarded in the previous proceeding and the adjustment for the said amount. The above mandate itself indicates that for the purpose of awarding further maintenance, it is a bounden duty of the applicant to disclose the receipt of the previous maintenance amount.

[15] In the case in hand, the applicant is a Law graduate and aware of the provisions of law, and therefore, it was incumbent on her to disclose all the material facts before the

court. Undisputedly, the interim maintenance order was passed on 19-10-2022, i.e., well before the evidence was adduced. Similarly, it appears that the learned Additional Sessions Judge enhanced the said interim maintenance order vide judgment and order dated 22-02-2024, i.e., much before the judgment in the case was passed. But none of the parties has produced a copy of the order of the learned Addi. Sessions Judge. Indeed, the non-production of the order by both the applicant and the respondent is improper. It is not the case that the respondent was not contesting the application before the learned Family Court. But he appeared through his advocate and argued the application. Therefore, in my view, there is no doubt about the conduct of the applicant; for the said conduct, at the most, the applicant can be liable to pay the costs for non-production of the said order before the court. But certainly, on that ground, it would not be proper to dismiss the application, as it was filed under the beneficial legislation, and it is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Code of Criminal Procedure, or under H.M.A.

[16] Moreover, she has disclosed about the filing of D. V. proceedings by affidavit of examination-in-chief (Exh. 17) and also filed a copy of the order passed in PWDVA No. 146/2021. Likewise, during her cross-examination, she admitted that, in the DV proceeding, an interim relief of Rs. 2500/- was granted to her, which she challenged before the appellate authority. In such circumstances, it cannot be said that she has suppressed the facts of filing the D. V. Proceedings from the court, but it can be inferred that the interim maintenance order passed therein was not produced before the court. Accordingly, the findings recorded by the learned Judge are liable to be set aside.

[17] The next aspect is whether the applicant is entitled to maintenance or not. However, the learned Judge has not dealt with the said issue. Though in para 9, it is observed that the applicant has miserably failed to prove that the non-applicant has failed and neglected to maintain her. When it is undisputed that the applicant is residing separately, and it is a settled position of law that the husband is bound to maintain his wife. Therefore, these findings appear contrary to the settled position of law. The learned Judge has not dealt with the issue of whether the applicant is entitled to maintenance or not. But, erred in holding that she is not entitled to maintenance.

[18] I would like to reproduce paragraphs 66 and 67 of the judgment in **Rajnesh Vs Neha** (supra) as under:

"66. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in Chander Prakash Bodhraj v. Shila Rani Chander Prakash, 1968 AIR(Del) 174: MANU/DE/0028/1968. The onus is on the husband to establish with the necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons

beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.

67. This Court in **Shamima Farooqui v. Shahid Khan**, 2015 5 SCC 705: MANU/SC/0380/2015 cited the judgment in Chander Prakash (supra) with approval, and **held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife."**

[19] A bare perusal of the above dictum, it appears that it is a bounden duty of the husband to maintain his wife and children. He cannot contend that he is not in a position to earn sufficiently to maintain his family. It is not in dispute that the respondent/husband has not adduced any evidence in support of his defence nor provided any maintenance to the wife when she is residing separately from him. Thus, in view of the above mandate, the husband is bound to pay the maintenance to the wife.

[20] It further appears from the record that initially the learned Magistrate awarded an interim maintenance of Rs. 2500/- to the applicant, which was the learned Addl. Sessions Court enhanced up to Rs. 5000/- per month. However, this court stayed the said order and directed the respondent to pay Rs. 3500/- to the applicant. The above order indicates that the applicant is currently receiving Rs. 3500/- per month as interim maintenance. The prices of the essential commodities have risen, and therefore, the amount of Rs. 3500/- granted to the applicant is too meagre to live the life as per the status of her husband.

[21] Apart from this, the respondent failed to adduce any evidence on record to demonstrate that the applicant has an income source or that she earns the amount as claimed. However, he did not enter the witness box and failed to establish that the applicant has any source of income. As such, it appears that the applicant is currently receiving interim maintenance of Rs. 3500/- only.

[22] I would like to reproduce para 98 (i) of the judgment in Rajnesh Vs Neha (supra) as under:

"98. To overcome the issue of overlapping jurisdiction and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

(i) where successive claims for maintenance are made by a party under different statutes, the Court would consider an adjustment or set-off of the amount awarded in the previous proceeding/s, while determining whether any further amount is to be awarded in the subsequent proceeding."

(ii) It is made mandatory for the Applicant to disclose the previous proceeding and orders passed therein in the subsequent proceeding.

(iii) If the orders passed in the previous proceeding/s require any modification or variation, it would be required to be done in the same proceeding.

[23] In the judgment mentioned above, the Hon'ble Apex Court has given direction while dealing with an issue of overlapping jurisdiction. As per the said direction, the learned Judge shall pass an order regarding maintenance to the applicant therein.

[24] The learned advocate for the respondent relied on the judgment in K. D. Sharma (supra) and referred para Nos. 24 to 29, 45 and 46 and urged that in view of the dictum laid down in the said judgment, the applicant is not entitled for the relief as claimed as she has suppressed the fact from the court about receipt of the maintenance in the DV proceeding.

[25] The facts in the said case are distinct from the case at hand. It was brought to the notice of the learned Judge that a DV proceeding is pending between the parties. However, the parties have not produced a copy of order passed in D. V. proceeding about interim maintenance before the court. It is pertinent to note that it was incumbent on the applicant as well as the respondent to produce the said order before the court. However, neither party has produced the same before the court nor disclosed the same. Thus, considering the beneficial legislation and the fact that the applicant-wife is entitled to make an application for maintenance under different statutes. In my view, the law laid down in the above judgment is hardly of any assistance to the respondents in support of his contention.

[26] In the judgments Sudeep Choudhary Vs Radha Chaudhary (supra), Vishal Rajasaheb Gore Vs Sow. Aparna Vishal Gore and others (supra), and Rajnesh Vs Neha (supra), the Hon'ble Apex Court held that the maintenance allowance granted needs to be adjusted in the subsequent proceeding. The Hon'ble Apex Court, after considering various judgments of the Apex Court and High Courts, has given **Certain guidelines** for granting maintenance and adjusting the same in **Rajnesh Vs Neha** (supra), and therefore, the court has to follow the said directions of the Hon'ble Apex Court.

[27] Therefore, in the case in hand, also receiving the interim maintenance in the DV proceeding can be adjusted while passing the order of maintenance instead of rejecting the same on the point of non-disclosure of the fact of filing D.V. case to the Court, and the facts that, she has not given any reason as to why she has filed the present petition again seeking maintenance from the non-applicant, without assigning cogent reasons. Therefore, in my view, observations made in the said judgments are hardly of any assistance to the respondent, but the same is helpful to the applicant in support of her case.

[28] To sum up the above discussion, it appears that the learned Judge, without dealing in detail, has given more significance to the fact that the applicant has failed to disclose the facts of receiving the interim maintenance to her and has dismissed the petition. In fact, it was incumbent on the learned Judge to deal with the evidence on record in detail, when admittedly, the respondent failed to adduce any evidence in support of his defence. The court is bound to consider the settled position of law as well as the evidence on record in its proper perspective. However, the learned Judge has failed to consider the same in its proper perspective and erred in dismissing the petition. Therefore, in my view, an interference is required in the revisional jurisdiction.

[29] As a result, the criminal revision application is allowed. The impugned judgment and order dated 27-09-2024, passed by the learned Judge, Family Court, Aurangabad, in Petition E-No.98/2021, is hereby quashed and set aside. The matter is remanded back to the learned Judge, Family Court, Chh. Sambhajinagar for reconsideration afresh on its own merits. The rule is made partly absolute accordingly. No order to costs.

[30] The parties are directed to appear before the learned Judge, Family Court, Chh. Sambhajinagar on 01.01.2026. The proceedings should be completed and decided on or before 30th April 2026.

[31] Inform the learned Judge, Family Court, accordingly

2026(1)McrJ34

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

(Hon'ble Judge: Urmila Joshi-Phalke; Nandesh S Deshpande)

Criminal Application (Apl) No 1347 of 2023, 1321 of 2025 **dated 11/12/2025**

Krishna Mandadi; Venkata Siva Kishore Patnala

Versus

State of Maharashtra; Chandrabhan Meghare

FIR QUASHING NEGLIGENCE

Indian Penal Code, 1860 Sec. 304A - Code of Criminal Procedure, 1973 Sec. 482 - FIR Quashing Negligence - Applications filed under Section 482 CrPC seeking quashing of FIR registered under Section 304A IPC relating to death of child due to fall in pothole at construction site - Applicants were Managing Director and Engineer of construction company - Evidence showed Managing Director not handling daily operations and Engineer joined after incident - No proof of personal negligence or vicarious liability - Court held criminal law does not recognize vicarious liability unless statute provides - No material to proceed against applicants - FIR and proceedings quashed - Applications Allowed

Law Point: In absence of specific statutory provision or evidence of personal negligence, company officials cannot be held criminally liable under Section 304A IPC for acts of employees; vicarious liability not applicable in criminal law.

Acts Referred:

Indian Penal Code, 1860 Sec. 304A

Code of Criminal Procedure, 1973 Sec. 482

Counsel:

Chinmay Dharmadhikari, A G Mate, A O Shriwas, Shamsi Haider

JUDGEMENT

Urmila Joshi-Phalke, J.- [1] These applications are filed under Section 482 of the CrPC.

[2] In Criminal Application No.1347/2023, heard learned counsel Shri Chinmay Dharmadhikari for the applicant and learned Additional Public Prosecutor Shri A.G.Mate for the State.

[3] In Criminal Application No.1321/2025, heard learned counsel Shri A.O.Shriwas for the applicant and learned Additional Public Prosecutor Mrs.Shamsi Haider for the State.

[4] Though both applications are closed for orders on different dates i.e. 8.12.2025 and 9.12.2025, since facts are identical and FIR is the same in both applications, these applications are clubbed together for passing common orders.

[5] By these applications, applicants seek quashing of FIR in connection with Crime No.49/2018 registered for offence under Section 304-A of the IPC and consequent proceeding arising out of the same bearing SCC No.943/2018 pending before learned JMFC, Seloo, district Wardha.

[6] Brief facts of the case are that, applicant Krishna Mandadi (In Criminal Application No.1347/2023) is Managing Director of construction company namely "Someshwaraya Infrastructure Pvt.Ltd." (the said construction company).

Whereas, applicant Venkata Siva Kishore Patnala (In Criminal Application No.1321/2025) is Engineer of the said construction company.

The said construction company is engaged in construction of major Governmental and SemiGovernmental Works and carries out works of construction of roads and bridges etc.. The said construction company was assigned with work of construction of "over-bridge" at Sindhi Railway Station, Wardha. When the said work was in progress, some streams and potholes were dug by workers of the said construction company. On 9.10.2017, child namely "Wahid Lobh Shah," aged about two and a half years, fell in one of potholes and as it was rainy season, the said pothole was filled with water. As a result of which, the child died due to drowning.

[7] As per the case of the prosecution, since there were no proper preventive measures or security measures at the construction site, and no barricades/flags were erected around the potholes to cover the same, applicant Krishna Mandadi, working as Managing Director, and applicant Venkata Siva Kishore Patnala, working as Engineer, are responsible for the said unfortunate death of the said child and, therefore, the crime was registered against both the applicants under Section 304-A of the IPC.

[8] Learned counsel Shri Chinmay Dharmadhikari submitted that applicant Krishna Mandadi is Managing Director of the said construction company and he was not concerned with day-to-day activities of the said construction. A contractor was

deputed there and the work was in progress under supervision of the contractor and Engineer. He is a senior citizen and vicarious liability is unknown to the criminal law. The applicant cannot be held liable for act of others. He submitted that none of statements shows that the applicant was looking after day- to-day activities of the construction work and, therefore, he is responsible for act of negligence. He submitted that, moreover, during mediation process, both parties have settled the dispute and compensation is deposited in this court. In view of that, as there is no direct involvement of the applicant, and for holding him guilty of vicarious liability also none of statements discloses that he was looking after day-to-day activities of the said construction work, no prima facie case is made out against applicant Krishna Mandadi. In view of that, the FIR lodged against him and the consequent proceeding arising out of the same deserve to be quashed and set aside.

[9] In support of his contentions, learned counsel Shri Chinmay Dharmadhikari appearing for applicant Krishna Mandadi placed reliance on **Shiv Kumar Jatia vs. State of NCT of Delhi**, 2019 17 SCC 193.

[10] Learned counsel Shri A.O.Shriwas appearing for applicant Venkata Siva Kishore Patnala, submitted that recital of the FIR and final report itself shows that the present applicant joined work with the said construction company as Engineer after the date of incident i.e. 12.10.2017. Whereas, the alleged incident has taken place during intervening night of 9.10.2017 and 10.10.2017. Recital of the chargesheet itself shows that the present applicant was not working at the said site on the day of the incident and he joined the said site subsequent to that and, therefore, he cannot be held liable for the act of negligence. In view of that, the FIR lodged against him and the consequent proceeding arising out of the same deserve to be quashed and set aside.

[11] Per contra, both learned Additional Public Prosecutors for the State strongly opposed these applications and submitted that considering fact, that the small boy of two and a half years died due to drowning in the said pothole, it was the duty of the Managing Director of the said construction company as well as persons looking after the work to keep security measures at the construction site, and, therefore, these applications deserve to be rejected. They took us through various statements of witnesses.

[12] After hearing both the sides and perusing investigation papers, there is no dispute to the fact that the deceased, aged two and a half years, was a child of a labour working on the said construction site. It is also not in dispute that the said child died due to drowning in the pothole, which was dug at the construction site. Applicant Krishna Mandadi is Managing Director of the said construction company. During the investigation, statements of parents of the deceased child as well as statements of others are also recorded. None of statements discloses that applicant Krishna Mandadi was looking after day-to-day activities of the said construction site. The statements of the parents of the deceased child nowhere state that as no safety measures were kept at the construction site, the deceased child fell in the said pothole and died. On the contrary, the statement shows that the mother of the deceased child left her house to

proceed towards hospital and she was not aware that her deceased child is also following her and, accidentally, the deceased child fell in the said pothole and died due to drowning. None of statements discloses that there were no safety measures kept at the construction site. Evening accepting the allegations as it is, admittedly, no investigation is carried out by the investigating agency to show that applicant Krishna Mandadi was looking after the day-today activities of the said construction site and, therefore, he is a responsible person assigned with duty at the construction site and he has not kept any safety measures.

[13] Insofar as another applicant Venkata Siva Kishore Patnala is concerned, admittedly, he joined his duty with the said construction company as Engineer after the date of incident i.e. 12.10.2017. Whereas, the alleged incident has taken place during intervening night of 9.10.2017 and 10.10.2017. Therefore, he cannot be held liable for the said incident.

[14] Learned counsel Shri Chinmay Dharmadhikari appearing for applicant Krishna Mandadi, rightly placed reliance on the decision in the case of Shiv Kumar Jatia supra wherein it is held that, "it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the Statute specifically provides for. It is further held that an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. It is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision".

[15] In **Criminal Appeal No.11/2025 (Sanjay Dutt and ors vs. The State of Haryana and anr) decided by the Supreme Court on 2.1.2025**, it has also been observed that, "there is no vicarious liability that can be attached to any of the directors or any office bearers of the company. It is the individual liability or the act that would make the person concerned liable for being prosecuted for the offence punishable under Section 19 of the Act, 1900".

[16] Similarly, in Criminal Appeal No.34/2015 and other connected appeals (Sunil Bharti Mittal vs. Central Bureau of Investigation) decided by the Supreme Court on 9.1.2025 it has been observed that, "when the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect".

It has further been held, by referring another decisions in the cases of **Sham Sunder vs. State of Haryana**, 1989 4 SCC 630 and **Hira Lal Hari Lal Bhagwati vs. CBI**, 2003 5 SCC 257, that, "there is no vicarious liability in criminal law unless the statute takes that also within its fold".

It has further been held that, "the Penal Code, 1860 save and except in some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director

or the Directors of the Company, thus, cannot be said to have committed an offence only because they are holders of offices".

[17] It is well settled principle that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion.

[18] By applying these principles to the facts of the present case in hand, admittedly, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused if the statute provides such liability and if there is sufficient evidence of his active role coupled with criminal intent. The primary responsibility is on the complainant to make specific averments as are required under the law. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Even, where such provision for fastening vicarious liability exists, it does not mean that all Directors of the company would be automatically liable for any contravention of such statute. Vicarious Liability would arise only if there are specific and substantiated allegations attributing a particular role or conduct to such director, sufficient enough to attract the provisions constituting vicarious liability and by extension the offence itself.

[19] In the light of the above observations and by applying the same to the facts of the present case in hand, admittedly, there is no specific allegation against applicant Krishna Mandadi that he has played a particular role or he was responsible for the day-to-day activities of the said construction work.

[20] Insofar as another applicant Venkata Siva Kishore Patnala is concerned, he joined his duty as Engineer with the said construction company after the alleged incident i.e. 12.10.2017. Whereas, the alleged incident has taken place during intervening night of 9.10.2017 and 10.10.2017.

[21] Thus, specific allegation against both applicants is absent in the present case.

[22] The law relating to quashing of FIRs was explained by the Hon'ble Apex Court in the case of **State of Haryana and ors vs. Bhajan Lal and ors**, 1992 1 SCC 335 Supplementary wherein principles have been laid down which are required to be considered while considering applications for quashing of the FIRs, which read as under:

"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge".

[23]. In view of the above, as no prima facie case is made out against the applicants, these applications deserve to be allowed, as per order below:

ORDER

(1) Both Criminal Applications are **allowed**.

(2) FIR in connection with Crime No.49/2018 registered for offence under Section 304-A of the IPC and consequent proceeding arising out of the same bearing SCC No.943/2018 pending before learned JMFC, Seloo, district Wardha are hereby quashed and set aside to the extent of applicants Krishna Mandadi and Venkata Siva Kishore Patnala.

(3) The compensation amount Rs.3,50,000/- deposited by Demand Draft No.329841 on 17.11.2025 by applicant Krishna Mandadi be credited in "Indian Bank Account No.8190135973" in the name of the mother of the deceased child "**Batvi Lobshah Madari**."

(4) Registry of this Court to comply with the above said directions with immediate effect.

Applications stand disposed of

2026(1)McrJ40

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Dr Neela Gokhale)

Bail Application No 1627 of 2025 **dated 03/12/2025***Blessing Amaka Okonko***Versus***State of Maharashtra***BAIL UNDER NDPS**

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 22, Sec. 50, Sec. 29, Sec. 42 - Bail Under NDPS - Applicant arrested for possession of 460 grams of Mephedrone and supplying same to co-accused - Contended non-compliance of Sec.42 and Sec.50 NDPS Act - Prosecution produced contemporaneous record and notices showing compliance - Court observed that personal search was taken by gazetted officer with lady panch and lady police officer - Held that procedural safeguards complied - Recovery being commercial quantity and applicant being foreign national with expired visa, risk of absconding high - Bail denied - Bail Application Rejected

Law Point: When recovery of commercial quantity of contraband is proved and statutory provisions under Sections 42 and 50 NDPS Act are duly complied, court cannot infer reasonable belief of innocence-bail cannot be granted unless twin conditions under Section 37 satisfied.

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 22, Sec. 50, Sec. 29, Sec. 42

Counsel:

Khushal Parmar, Anjali More, Manisha R Tidke

JUDGEMENT

Dr. Neela Gokhale, J.- [1] By this Application, the Applicant seeks her enlargement on bail in connection with FIR No. 01 of 2023 dated 01st January 2023 registered with the ANC, Ghatkopar Unit, Mumbai, for the offences punishable under Sections 8(c), 22(b), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

[2] The facts of the case, in brief, are as under:-

2.1 On 31st December 2022, at around 1800 hours, the officials of the ANC, Ghatkopar Unit, Mumbai, received information of sale of narcotics in Mumbai City. Armed with this information, the officials formed a team and set off for patrolling. They carried with them all the necessary material required for compliances under the NDPS Act. During patrolling, they found 2 persons lurking in suspicious

circumstances near the Lotus Prime Cloth Store, Navrang Compound, Mahim-Sion Link Road Bridge, Mumbai. The Police stopped their vehicle a little ahead of them, and kept a watch on the activities of those two persons. It appeared that the said two persons were waiting for someone. Finally, the Police officials started to go upto them to make inquiries.

2.2 On seeing the Police, the said two persons scrambled to disperse. The Police caught up with them and began making inquiries. The persons gave evasive answers. Finding their behaviour suspicious, the Police proceeded to call two panchas. Thereupon, after complying with the requisites of the NDPS Act, they undertook a search of the said persons. 40 grams of Mephedrone ('MD') was recovered from the person of one of them namely, Nitin Chandrakant Adsul @ Papyia. It was stored in a zip lock plastic pouch. Some cash was also recovered from him. Further, 110 grams of MD along with some cash were recovered from the other person namely, Reddy Mallesh Shadkinur @ Raju. The same was also stored in a zip lock plastic pouch.

2.3 Papyia and Raju were brought to the Police Station and were arrested. Panchanamas were recorded and other formalities of the provisions of the NDPS Act were complied. On interrogation, Raju informed the Police that one lady namely, Blessing Okonko supplied 150 grams of MD to him out of which he had sold 40 grams to Papyia. This lady is the Applicant herein.

2.4 At 4:55 am of 1st January 2023, the officials of the ANC, Ghatkopar Unit, Mumbai set off on patrolling duty to look for the Applicant at the location revealed by Raju. Raju accompanied the officials. The officials reached the location at about 6.30 am and laid a trap. The Applicant came near the location at around 7.15 am. She was pointed out to the Police by Raju. The Police stopped the Applicant and made inquiries regarding her identity. She gave evasive answers. She was also searched after following due process of law. A plastic zip lock pouch containing 460 grams of MD was recovered from the pocket of her jacket. Accordingly, the Applicant was also arrested on 1st January 2023.

[3] The Applicant filed an application seeking bail in the Special Court for NDPS at Greater Bombay, however, by order dated 17th March 2025, the bail application was rejected. Hence, the Applicant is before this Court seeking reliefs as prayed.

[4] Mr. Khushal Parmar, learned counsel appeared for the Applicant. He submitted that the Police have not complied with the provisions of Section 42 of the NDPS Act; there was no CDR, bank transactions or any WhatsApp chats of the Applicant with the co-accused; there is non-compliance of Section 50 of the NDPS Act as the personal search of the Applicant was taken by a Senior Police Inspector along with a lady police Sepoy and a lady panch. He submitted that they are not authorized to search an accused. He also submitted that the panchas failed to sign the letter under Section 50 of the NDPS Act although they have signed the notice under Section 50 of the NDPS Act. Mr. Parmar further submitted that the Applicant is in custody for more than 2 years, however, the trial has not concluded as yet. He thus, prays that the

Applicant be released on bail. He placed reliance of a decision of Supreme Court in **Sarija Banu (A) Janarthani @Janani and Anr. v. State through Inspector of Police**, 2004 12 SCC 266 and in the matter of Aarif Akram Singh Shaikh v. State of Maharashtra, 2023 BHC(AS) 5149.

[5] Ms. Manisha Tidke, learned APP representing the State in the matter, submitted that all the compliances under the NDPS Act are made. She pointed to the detailed panchanamas on record. She also drew my attention to the letter addressed to the Senior Police Officer by the Officer-inCharge of the ANC, Smt. Lata Sutar, conveying to him the details of the information received and reduced into writing. The said letter is signed by Smt. Lata Sutar. Thus, she submitted that Section 42 of the NDPS Act is complied with. She thereafter pointed to the letter addressed to the Applicant, apprising of her rights under Section 50 of the NDPS Act, to which the Applicant consented. Ms. Tidke, thus submitted that compliance under Section 50 of the NDPS Act is also complete. Personal search of the Applicant was taken by an authorized officer. She further submitted that the Applicant is residing in India unauthorisedly as her visa has already expired. She also submitted that the charges are framed and the trial is soon to commence. There is no long incarceration, hence, the Bail Application be rejected.

[6] Heard learned counsel appearing for the parties and perused the record with their assistance.

[7] The essential objections of Mr. Parmar are that of non-compliance of Section 42 and Section 50 of the NDPS Act. As far as Section 42 is concerned, I have gone through the letter reducing the information received from the coaccused in writing and forwarded to the Senior Officer. The entire sequence of events took place in continuation of the arrest of the co-accused. There was no specific intelligence regarding the co-accused. The generic intelligence was regarding narcotic trade being plied in Mumbai City. The officials thus, set out on patrolling duty and nabbed coaccused Raju and Pappya. There is a panchanama recorded, detailing the events of the intervening night of 31st December 2022 and 1st January 2023. The arrest of the co-accused followed by the Applicant's arrest is reduced into writing and forwarded to Senior Officer. The extract of the Station Diary also shows an entry recorded at 04:30 a.m. of 1st January, 2023, regarding the information given by Raju. There is compliance of Section 42 of the Act and the objection of Mr. Parmar regarding non-compliance of Section 42 of the NDPS Act is not sustainable.

[8] I have perused the decision of the Supreme Court in **Sarija Banu (Supra)**, which observes, it is necessary for the Court to consider alleged violation under Section 42 of the Act at the stage of bail. I have considered the objection raised by Mr. Parmar in this regard. I have found that Section 42 of the Act is complied with. Hence, the observations in the said decision does not apply to the facts of the present matter. Similarly, the facts in the decision of **Aarif (Supra)** are distinct from the present case and hence, inapplicable.

[9] As regards, objection of non compliance of Section 50 is concerned, there is a letter apprising the Applicant regarding her rights, to which the Applicant has penned the following words, signifying her willingness to be searched by the Police and waiving her right to be searched by the Magistrate/Gazetted Officer:

" I am aware about my rights. Police can take my personal search. I have no objection."

The Applicant has signed and dated the said letter. The only lapse is that the Panch have not signed the said letter. According to Mr. Parmar, this lapse is sufficient to record satisfaction that the Applicant has not committed the said offence. In my view, Section 50 of the Act does not require the Panchas to countersign the letter under Section 50 of the Act. The said lapse is thus not sufficient to record a reasonable belief that the Applicant has not committed the offence.

[10] The Applicant's personal search was conducted by PI - Sutar, who is a Gazetted Officer herself in the presence of the lady panch and another lady police officer namely Ms. Korpe in a secluded place. Thus, there is no contravention of the provisions of Section 50 of the Act.

[11] The Applicant is also residing illegally in India as her visa stands expired as on date. Hence, it is likely that the Applicant may not remain present to attend the trial and her presence will be difficult to secure. The quantity of contraband recovered from the pocket of the Applicant's jacket is 460 grams of MD, which is a commercial quantity.

[12] The conditions imposed in Section 37 (1) of the Act is that the Public Prosecutor ought to be given an opportunity to oppose the bail Application; if opposed by the Public Prosecutor, the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such an offence and additionally must be satisfied that the accused persons is unlikely to commit any offence while on bail.

[13] As observed by the Apex Court in **Collector of Customs, New Delhi v. Ahmadaliev Nodira**, 2004 3 SCC 549 'reasonable grounds' means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the offence. The reasonable belief contemplated in the provisions requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

(emphasis supplied)

[14] Thus, the focus is on the availability of reasonable grounds to believe that the accused is not guilty of the offence as charged. In the facts of the present case, the Applicant was not only apprehended with a large quantity of MD i.e. 460 grams, but also, she was supplying for sale, the said substance to dealers, including Raju and Papya. In view of the magnitude of the offence, the wider societal implications of releasing the Applicant from whose possession commercial quantity of narcotic is recovered, the possibility of the Applicant returning to the same network and re-offending, and the difficulty in securing the presence of the Applicant to face the trial, I am not inclined to release the Applicant on bail.

[15] Mr. Parmar's objection on various alleged infirmities in the prosecution case including alleged procedural lapses, discrepancies in Pancha's signatures on Section 50 letter etc., relate to evaluation of evidence, which matters can be properly appreciated by the Trial Court. The Constitutional Court is not required to decide the question of guilt or innocence of the Applicant at the bail stage and the scope of consideration is limited.

[16] Moreover, this Court is of the view that as the Applicant is charged with offences punishable with 10 to 20 years rigorous imprisonment, it cannot be said that the Applicant has been incarcerated for an unreasonably long time. Furthermore, since this Court is of the prima facie opinion that the Applicant is involved in drug trafficking, no case is made out for dispensing with the mandatory requirement of Section 37 of the NDPS Act. In any case, in the facts and circumstances of this case, I am unable to record a finding that there is reasonable ground to believe that the Applicant has not committed the said offence.

[17] The Bail Application is thus, rejected.

[18] It is made clear that the observations made herein are prima facie and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein

2026(1)McrJ44

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Dr Neela Gokhale)

Criminal Appeal No 716 of 2009 **dated 01/12/2025**

State of Maharashtra

Versus

Maruti Bhikaji Borkar; Ramesh Dhondiba Ware; Shrikant Sopan Gaikwad

DEMAND OF BRIBE

Code of Criminal Procedure, 1973 Sec. 313 - Prevention of Corruption Act, 1988 Sec. 13, Sec. 7, Sec. 12 - Demand of Bribe - Appeal filed against acquittal order under Prevention of Corruption Act - Allegation that public servant demanded illegal gratification for passing order in mutation entry - Trap laid by Anti-Corruption Bureau and recovery made - Trial Court acquitted accused on ground of lack of corroboration and absence of proof of conscious acceptance - Evidence of complainant and panch witnesses considered not credible - Appellate Court observed that double presumption of innocence operates in case of acquittal and interference permissible only if findings are perverse or unreasonable - Evidence reappreciated showing that prosecution failed to prove demand and acceptance beyond reasonable doubt - Held that mere recovery not sufficient to convict without proof of demand and voluntary acceptance - Acquittal

based on proper appreciation of evidence - Acquittal confirmed - Criminal Appeal Dismissed

Law Point: For conviction under Sections 7 and 13 of Prevention of Corruption Act, prosecution must establish demand and voluntary acceptance of illegal gratification beyond reasonable doubt - Mere recovery of tainted money without proof of demand and conscious acceptance cannot sustain conviction - Appellate Court should not interfere with acquittal unless findings are perverse or wholly unreasonable

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 313

Prevention of Corruption Act, 1988 Sec. 13, Sec. 7, Sec. 12

Counsel:

Anuja Sunil Gotad, Uday Dube (Senior Advocate), Balwant Salunkhe, Saurabh Butala

JUDGEMENT

Dr. Neela Gokhale, J.- [1] This Appeal assails the Judgment and Order dated 2nd September, 2008, passed by the Special Judge at Baramati, District Pune, acquitting the Respondents herein (Original Accused Nos.1 and 2) from the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short '**PC Act**') and acquitting the Respondent No.3 (Original Accused No.3) from the offence punishable under Section 12 of the PC Act.

[2] By an order dated 18th June 2009, this Court, by a reasoned order opined that a triable issue was made out by the Appellant-State of Maharashtra, to be dealt with in this Appeal, to ascertain the correctness and legality of the impugned Judgment and Order. Hence, this Court allowed the Leave Petition and admitted the Appeal.

[3] The facts of the case, in brief, are as under:

3.1 The Respondent No. 1/Accused No.1 (A/1) was a Tahsildar posted at Indapur. The Accused No.2/Respondent No.2 (A/2) was working as a clerk in the Tahsildar's office, and the Accused No.3/Respondent No.3 (A/3) was another person in the office of the Tahsildar.

3.2 The Informant's father died on 19th June 2005 and he thus, made an application before the Talathi, seeking to enter the names of his father's legal heirs on the revenue records of the agricultural land owned by his father. The Talathi carried out the mutation entry. The same was challenged by one Vijay Gulumkar, a cousin brother of the Informant. Hence, the Application was forwarded to the A/1 for decision. Notices were issued to the parties calling upon them to appear before the Tahsildar on 31st October 2005. Written statements were submitted, and the matter was closed for orders.

3.3 On 22nd December 2007, the Informant (PW/1) went to the office of the Tahsildar to enquire about the pending case. The Tahsildar demanded Rs.3,000/- in lieu of clearing the file and passing an order in favour of the Informant. The Informant indicated his inability to pay the said amount prompting the Tahsildar to reduce the demand to Rs.1,000/-. The Informant met A/2 who also conveyed the demand of 'Saheb' to him. Again at 05:00 pm. on the same date, the Informant met the Tahsildar and his clerk in his office, who asked him as to whether he had brought the amount with him. They told him that he should pay the money and collect the order. The Informant assured the A/1 and A/2 that he will come on the following day with his brother and bring the money.

3.4 The Informant then, made a complaint with the AntiCorruption Bureau, Pune ('ACB') on 28th December 2005, (Exhibit-30) narrating the demand of the A/1 and A/2. The ACB Pune laid a trap on the same day. The amount of Rs.1,000/- (10 currency notes of Rs.100/- denomination) was taken from the Informant and the numbers of the currency notes were noted; anthracene powder was applied on the currency notes on both sides; and these notes were returned to the Informant to be given to A/1 - Tahsildar. A pre-trap panchanama was recorded (Ex.33). One panch, Shri Ganesh Krishna Chillal (PW/2) accompanied the Informant in the office of the Tahsildar. The Tahsildar informed him that a copy of the order was sent to the Talathi and also inquired about the bribe money. On the instructions of the Tahsildar, the Informant met A/2 - clerk who pointed to the A/3, namely Shrikant Gaikwad, who accepted the money on behalf of the A/1. Two copies of the order were handed over to the Informant. After paying the money to A/3, the Informant signaled the officers as per their instructions and he came out of the room. The pancha accompanying the Informant remained in the room as per predetermined plan. The members of the raiding party went in the room on a predetermined signal and caught A/3 red handed. The amount was recovered from the drawer of the computer room in A/2's cabin, where the A/3 had kept the same.

3.5 The numbers of the currency notes recovered from the computer room were tallied with the numbers noted by the ACB officials. Anthracene powder was found on the said currency notes and on A/3's hand and the drawer of the computer room. The documents of the mutation entry case were collected from the Tahsildar's office, a panchanama was recorded (Exhibit-34). Shri Sudam Darekar (PW/4), Deputy SP, ACB, conducted the investigation. A sanction for prosecution of the A/1 and A/2 was sought and granted by the sanctioning authority (Sanction Order at Ex.40) and upon completion of the investigation, the charge-sheet was filed before the JMFC, Indapur. The offence punishable under Sections 7 and 13 of the PC Act, being exclusively triable by the Sessions Court, was committed by the JMFC, Indapur, to the Court of Sessions, for trial.

3.6 By an order dated 26th March 2008, the Special Judge, Baramati, framed charges against the A/1 and A/2 for offences punishable under Sections 7 and 13(1)(d)

r/w Section 13(2) of the PC Act, and against A/3 for offence punishable under Section 12 of the PC Act.

3.7 After framing of the charges, the Accused pleaded not guilty and sought to be tried.

3.8 During the course of the trial, the prosecution examined four witnesses. The witnesses examined are as follows:

PW/1 Sukhdeo Rangnath Gulumkar (First Informant)

PW/2 Ganesh Krishna Chillal (Panch No.1)

PW/3 Shantaram Sitaram Kudale (Under Secretary Forest Section- Proposal for sanction received by his office).

PW/4 Sudam Vitthal Darekar (ACP of the Anti -Corruption Bureau)

3.9 Thereafter, the Trial Court recorded the statements of the Respondents (Accused Nos.1, 2 and 3) under Section 313 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'). The defence of the accused was that of false implication. The learned Special Judge, Baramati, by its Judgment and Order dated 2nd September 2008 acquitted A/1 and A/2 for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the PC Act and acquitted A/3 for the offence punishable under Section 12 of the PC Act. Aggrieved by the acquittal, the State of Maharashtra has filed the present Appeal. By an order dated 18th June 2009, Leave Petition was allowed, and the Appeal was admitted. The Record and Proceedings were called and received.

[4] Notice was duly served on all the Respondents and Mr. Balwant Salukhe represented the Respondent Nos.1 and 2. None appeared for the Respondent No.3.

[5] Before adverting to the rival submissions, it is necessary to discuss the principles laid down by the Supreme Court governing the scope of interference by the High Courts in an appeal filed by the State, assailing the finding of acquittal of the accused by the Trial Court. The Supreme Court in its decision in the matter of **Rajesh Prasad v. State of Bihar & Anr.**, 2022 3 SCC 471 held as below:-

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [**Chandrappa v. State of Karnataka**, 2007 4 SCC 415])

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseology are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

[6] Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka**, 2023 9 SCC 581 the Supreme Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of Cr.P.C. as follows:

"8.8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to re appreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

[7] Thus, it is beyond the pale of doubt that the scope of interference by an Appellate Court for reversing the judgment of acquittal recorded by the Trial Court in favour of the Accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

[8] The Appellate Court, to interfere with the judgment of acquittal, would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.

[9] In the light of above legal principles, I now proceed to analyze the evidence before the Trial Court, leading to the acquittal of the accused.

[10] The PW/1, the Informant, in his examination-in-chief has clearly narrated the incident of 22nd December 2005, i.e., the day on which the first demand was made by A/1. He specifically stated that A/1 demanded an amount of Rs.3,000/- for deciding the application in his favour. There were some negotiation and A/1 agreed to accept a reduced amount of Rs.1,000/- in lieu of passing an order in favour of the Informant. The PW/1 visited the Tahsildar office once again, when he was again told by A/1 to pay the money to A/2, who was instructed by A/1 to prepare the order and give copy of the same, after receiving the amount. In his crossexamination, PW/1 has categorically denied that he was unable to meet A/1 on the said date as he was on tour from 8.00 am to 5.00 pm. It is also revealed from the crossexamination that PW/1 learnt about the decision on his application only when he went on the assigned date to pay the bribe amount. Once, he assured that he had the amount, he was directed to pay the money to A/2 and collect the order passed in his favour from the Talathi, to whom the order was dispatched. Nothing was elicited from the cross-examination to indicate that A/1 was out of his office on 22nd December 2005, i.e., the day on which the demand was made. One of the defence of A/1 was that he was not present in the office on the date of first demand.

[11] The second demand was made at the time when PW/1 and PW/2, i.e., one of the panchas, accompanying PW/1 went to the Tahsildar's office, pursuant to the trap laid by the ACB. The deposition of the pancha confirms the demand made by A/1 once again. He deposed that he accompanied PW/1 in the cabin of Tahsildar on 28th December 2005, when the Tahsildar told PW/1 in his presence that his work is ready, one copy was sent to the Talathi and another is with A/2 and that he should collect the order from A/2. A/1 met A/2 after which A/2 asked PW/1 as to whether he had brought the money. Thereupon A/2 directed PW/1 to give the money to A/3. The money exchanged hands, A/3 counted the amount and pocketed it, confirmed to A/2 that money was paid after which PW/1 was given a copy of his order. PW/2 further confirmed that in his presence and on a signal given by PW/1 as prearranged, the ACB officials entered the Tahsil office. On A/3's admission, money was recovered from the drawer of the computer-room. The currency notes were checked for anthracene powder, and the numbers were tallied with the pre-trap panchanama. Anthracene was found on the hands and pocket of A/3 and the drawer in the computer-room. The entire

sequence of events has been deposed by PW/2 to have taken place in his presence. Even on intense cross-examination, his testimony could not be shaken.

[12] Pw/3 is the Under-Secretary of Forest Section and has deposed regarding sanction to prosecute the Accused. The same has not been seriously contested by the Accused.

[13] Pw/4 is the ACP of the ACB. In his deposition, he has narrated the facts regarding complaint of PW/1, the action taken by him and other officials in laying the trap including, applying anthracene powder on Rs.100/- notes, which were to be given by PW/1 to the Accused, the recording of the pre-trap panchanama and the actual raid carried out. In his cross-examination, an attempt was made by the defence to establish that the work of PW/1 was done by the Accused before the bribe money was paid. However, this witness remained steadfast in his testimony that the fact of the order passed in favour of PW/1 was noticed after the trap. Hence, nothing beneficial to the Accused was elicited from his cross-examination.

[14] I have perused the pre-trap panchanama and the panchanama recorded after the bribe money was recovered. The deposition of the witnesses is consistent with the panchanamas.

[15] I have perused the Judgment and Order acquitting the Accused carefully. The finding of the acquittal is only on the basis of a certified copy of a log-book of the Government vehicle, claimed to have been used by A/1 to travel out of Indapur to nearby villages for official work on 22nd December 2005, i.e., on the date on which PW/1 claims that the first demand was made. The learned Special Judge has relied on the statement of A/1 recorded under Section 313 of the Cr.P.C., that on the date of demand, he left his residence at 8.00 a.m. and visited villages - Wadapuri, Bhodni, Lakhewadi, Chakati, Redni and Warkude (Khurd). The Special Judge has recorded that a copy of the bill of TA and DA paid to the driver Kale, as per entry in the log-book and the certified copies of the statements of the persons recorded at the time of spot inspection at Mauje-Wadapuri on 22nd December 2005 are on record and sufficient to show that the A/1 was not in office on the date of demand. Hence, only on this basis, the Special Judge has disbelieved the deposition of PW/1. Secondly, the Special Judge appears to be swayed by the statement of A/1 that the application was already decided in favour on 27th December 2005, i.e., one day before the trap. On these two grounds, the Special Judge acquitted the Accused.

[16] I have perused the Record & Proceedings. There is a copy of the log-book certified by the Tahsildar himself, which has an entry of the vehicle leaving Indapur at 8:00 am and returning at 9:00 pm traveling to the villages mentioned herein above. There are also other entries in the log-book of the movement of the Government vehicle on other dates, including on 28th December 2005 from 9:00 am to 6:00 pm. However, it is an admitted fact that, on 28th December 2005, between 5:00 pm and 5:45 pm, a trap was laid by the ACB in A/1's office and all the accused were very much present in the office. The trap and the recovery of the bribe amount accepted by Accused is proved by

statements of PW/1, PW/2 and PW/4. It is also not the case of any of the Accused, that they were not present in the office on 28th December 2005. Thus, the entries in the log-book are only indicative of movement of the Government vehicle from Indapur to various places. The log-book entries by themselves are not evidence of travel of A/1 in the Government vehicle. If it was his case that the Government vehicle is used only by A/1, then, there possibly cannot be an entry regarding travel by A/1 on 28th December 2005, i.e., on the date of trap. The defence has nowhere attempted to establish that the Government vehicle was used only by the Tahsildar, leading the trial court to believe absence of A/1 in the office on the first demand date. On the contrary, the prosecution has beyond any doubt proved the demand made by A/1 by cogent oral evidence, which the defence was unable to demolish.

[17] The Special Judge has also accepted the statement of overtime TA/DA given to one Mr. A.J. Kale stated to be the driver attached to the Tahsil office in Indapur. The statement of TA/DA is from 1st December 2005 to 27th December 2005 and 3rd January to 28th February 2006. Contrary to the logbook entry of movement of the vehicle from 9:00 am to 6:00 pm on 28th December 2005, there is no explanation forthcoming regarding absence of the allowance on 28th December 2005. Thus, this is a major contradiction on the part of defence, rendering the story of the Accused completely unbelievable.

[18] There are many documents placed on record by the defence to show that some applications were made by the residents of Wadapur regarding requirement of a road in their village. Of the plethora of documents placed on record, only two statements relate to 22nd December 2005 signed by persons stated to be villagers of Wadapur. The place of recording of the statements is not visible on the documents. Most pertinently, none of the persons including any villager, pancha, driver-Kale nor any person maintaining the log-book of the Government vehicle is examined by the defence. In view of the discrepancies in the log-book as compared with TA/DA statement of the driver, it was imperative for the defence to examine some witness corroborating the story of the Accused.

[19] The defence of the Accused appears to be that of a plea of alibi. In the decision in **Binay Kumar Singh v. State of Bihar**, 1996 INSC 1260. The Supreme Court has considered the question of alibi meaning 'Elsewhere' and observed that the said plea would be available only if that 'Elsewhere' is a place far-off making it impossible or improbable for the person concerned to reach the place of occurrence of offence. The Apex Court held as under:

".....Once the prosecution succeeds in discharging the burden it is incumbent on the Accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened.

But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi. This Court has observed so on earlier occasions (vide Dudh Page 13 of 19 **Nath Pandey v. State of U.P.**, 1981 2 SCC 166 **State of Maharashtra v. Narsingrao Gangaram Pimple**, 1984 1 SCC 446.)"

[20] In the facts of the present case, the demand of the bribe money is established satisfactorily by the prosecution, through reliable evidence. Hence, it was incumbent on the defence to adduce evidence of the alibi by strict proof. The defence has completely failed to establish the plea of alibi. There is absolutely no evidence establishing presence of A/1 at the place other than the spot of the occurrence of the offence. In these circumstances, I am of the considered view that there is a mis-reading/omission on the part of the Special Judge in considering the material evidence on record. There is thus, a patent infirmity in the Judgment and Order impugned herein.

[21] The other basis of acquittal as per the Special Judge is that, there was no motive for the demand of bribe as the order in favour of the Informant was passed on 27th December 2005 itself. This finding is also contrary to the evidence on record. The prosecution has established the factum of demand and acceptance of bribe money by A/1 and A/2 beyond reasonable doubt. It has come on record that PW/1 was informed regarding the order passed on 27th December 2005 when he along with PW/2-Pancha went to the office of the Accused to pay the money, pursuant to the trap laid by the ACB. The PW/1 was told that his order was sent to the Talathi's office and categorically A/2 was directed by A/1 to take money from PW/1. The entire transaction was that of a simultaneous give and take. The fact of passing of the order was informed to him at the same time when the bribe money was accepted from him. Hence, the finding of the Special Judge in this regard is quite distorted, in this regard, as well.

[22] Section 7 of the PC Act deals with public servants accepting or attempting to accept illegal gratification other than their legal remuneration. Its essential ingredients are (i) that the person accepting the gratification should be a public servant; and (ii) that he should accept the gratification for himself, and the gratification should be as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official function, favour or disfavour to any person. Insofar as Section 13(1)(d) of the PC Act, it was amended by the Prevention of Corruption (Amendment) Act, 2018, with effect from 26th July, 2018. However, in view of Section 6 of the General Clauses Act, 1897, Section 13(1)(d) prior to the amendment, is applicable to the facts of the present case, as the offence was stated to have been committed on 22nd December 2005 and 28th December 2005. Thus, its essential ingredients are (i) that he should have been a public servant; (ii) that he

should have used corrupt or illegal means or otherwise abused his position as such public servant, and (iii) that he should have obtained a valuable thing or pecuniary advantage for himself or for any other person. The facts in the present case not only bring home the guilt to A/1 but also A/2, who directed the Informant to hand over the bribe money to A/3 and in lieu of the same, gave a copy of the order to the Informant. Thus, A/1 and A/2 are both complicit in commission of offence. As far as A/3 is concerned, the prosecution has been unable to establish beyond reasonable doubt, the abetment of the offence by A/3. The prosecution has failed to establish the active role and knowledge of A/3 that the money given to him was bribe money. Hence, the acquittal of A/3 cannot be faulted.

[23] The Supreme Court in its decision in the case of **State of Karnataka v. Chandrasha**, 2024 INSC 899 has reproduced its observations in an earlier decision in the matter of **Swatanter Singh v. State of Haryana**, 1997 4 SCC 14

"6..... Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politic, social fabric of efficiency in the public service and demoralizing the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of being corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke."

[24] Corruption on the part of public officers erodes the faith reposed by the citizens and has a pervasive impact on governance and democracy. Undoubtedly, the amount of bribe is a mere Rs.1,000/- however, it is settled law that it is not necessary for the amount involved to be substantial to draw the presumption under Section 20 of the PC Act. As per Section 20(3) of the PC Act, the Court has a discretion to refrain from drawing adverse presumption against the public servant if the amount involved is trivial. In the case of **Chandrasha** (Supra), the Supreme Court held that the presumption becomes irrelevant when the agreement to receive gratification is factually proved. The presumption under Section 20 of the PC Act provides that where it is proved that the public servant has accepted or obtained any undue advantage, unless the contrary is proven, it shall be presumed that such acceptance of undue advantage was with a motive or reward under Section 7 of the PC Act. The value of gratification is to be considered in proportion to the act to be done or not done, to forebear or not to forebear, favour or disfavour sought, so as to be trivial to convince the Court, not to draw any presumption of corrupt practice. In any case, the fact of demand and receipt of demand stand proved in the present case.

[25] Being conscious of the settled law that, in an appeal against acquittal, if two views are possible and the Court below has acquitted the accused, the Appellate Court would not be justified in setting aside the acquittal merely because another view is possible. In the present case however, the demand, the recovery of the bribe money from A/1 and A/2 being proven, in the absence of any concrete material supporting the

defence, brings home guilt to them beyond reasonable doubt. Once, the 'demand' and 'acceptance' of the bribe amount is established beyond reasonable doubt, in my opinion, no two views are possible in that matter. The defence has made no attempt to establish the alibi theory attempted to be put forth by A/1. Thus, the Judgment and Order impugned herein, is unsustainable. The Judgment and Order dated 2nd September, 2008, passed by the Special Judge at Baramati, District Pune, acquitting the Respondents herein (Original Accused Nos.1 and 2 from the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 is quashed and set aside. For reasons mentioned herein above, A/3 remains acquitted and the Judgment and Order impugned in so far as relating to A/3 is confirmed.

[26] Having convicted the Respondent Nos. 1 and 2 for the offences punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988, the next consideration is the quantum of punishment that may be imposed on them. Hence, I proceeded to hear the Respondent Nos.1 and 2 on the aspect of sentencing on 21st November 2025.

[27] Heard Mr. Uday Dube, learned Senior Counsel appearing for the Respondent Nos.1 and 2.

[28] Mr Dube, submitted that as many as 17 years have elapsed from the time that the accused were acquitted. He further submitted that the A/1 is due for retirement next year and has also aged considerably. Similarly, he submitted that the A/2 has few more years of service and has a family with children. Both the Accused are the sole earning members in their families and hence, lenient view be taken in the matter of sentencing.

[29] Admittedly, as many as 17 years have elapsed from the time, the accused were acquitted. The A/1 is due for retirement next year and the A/2 has few more years of service and has a family with children. Considering the gravity of the offence, the circumstances of the Accused and the time taken in deciding the present Appeal, I am inclined to impose minimum sentence provided for the said offence at the relevant time. The A/1 and A/2 are directed to undergo 6 months of simple imprisonment and liable to pay fine of Rs.500/- each. The A/1 and A/2 are directed to surrender before the Trial Court within a period of 12 weeks from today and the Trial Court is directed to take steps to commit them in prison to undergo the period of sentence and recover the fine imposed on them.

[30] The Appeal is accordingly, partly allowed

2026(1)MCRJ55

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

(Hon'ble Judge: Neeraj P Dhote)

Criminal Application; Criminal Appeal No 3642 of 2025; 743 of 2025
dated 27/11/2025

Shivaji Asaram Kadam

Versus

State of Maharashtra and Another

SENTENCE SUSPENSION

Indian Penal Code, 1860 Sec. 376 - Sentence Suspension - Application filed for suspension of sentence after conviction for rape of mentally challenged woman - Appellant aged sixty years undergoing ten-year sentence - Court observed lack of medical proof of victim's mental condition - Victim's testimony weak and not fully corroborated - Evidence disclosed arguable case - Appeal unlikely to be heard soon - Considering age and period of incarceration, sentence suspended till appeal disposal subject to bail bond - Sentence Suspended

Law Point: When conviction is based on debatable evidence and appeal hearing is distant, suspension of sentence may be granted considering age and incarceration period of convict

Acts Referred:

Indian Penal Code, 1860 Sec. 376

Counsel:

Nasimoddin R Shaikh, A D Wange, Ashok Raut

JUDGEMENT

Neeraj P. Dhote, J.- [1] This is an Application for Suspension of sentence imposed by the learned Additional Sessions Judge, Aurangabad in Sessions Case No.319/2022 by Judgment and order dated 14.01.2025 convicting the Appellant - Applicant for the offence punishable under Section 376(2)(1) of the Indian Penal Code and sentencing him to suffer Rigorous Imprisonment for 10 (ten) years and fine of Rs.10,000/- (Rs. Ten Thousand only), in default to suffer Rigorous Imprisonment for six months.

[2] Heard the learned Advocate for the Applicant - Appellant, the learned APP for the State and the learned Advocate for the Respondent No.2 - Victim. With their assistance, perused the evidence on record.

[3] The case of the Prosecution, in brief, is that, the Victim was mentally challenged and was raped by the Applicant - Appellant on 17.08.2019 at about 04:00

p.m. at secluded place in the village. The incident was seen by the Eye Witness and the Applicant fled. The Victim was taken to her house. The incident was reported to the Police and Crime bearing No.296/2019 came to be registered with the Paithan Police Station for the offence of Rape against the Applicant. After the investigation, the Applicant came to be Charge-sheeted and after full-fledged Trial came to be convicted as above.

[4] Though it is the case of the Prosecution that the Victim was mentally challenged, there is no medical evidence in support of the same. PW1, who is the Brother of the Victim, in his evidence deposed that, he had not submitted any medical papers regarding mental condition of his Sister and also the Police did not demand for the same. The Victim was examined as PW4 before the learned Trial Court. The note put by the learned Trial Court before the testimony of PW4 records that she put some questions to the witness and the witness was mentally ill, but she was able to understand the nature of questions and the importance of oath, and therefore, oath was administered to her. The only evidence of the Victim was that, she was residing with her Mother and Brother and on that day she was taken to the temple. Nothing has come in the evidence of the Victim. The evidence on record go to show that, the Statement of the Victim was recorded by the Police and also before the learned Magistrate in the presence of Special Teacher, who was examined as PW5. There is no concrete evidence to establish that the Victim was mentally challenged.

[5] There is no dispute that the Victim was 29 years of age at the time of the incident. The medical evidence speak of the sexual intercourse. The case primarily rests on the testimony of PW2, who claims to be the Eye Witness to the incident. However, the incident is reported to the Victim's Brother by PW3 who was not the Eye Witness to the incident. The above discussion show that, the Applicant has arguable case on merits. The sentence imposed on the Applicant is a term sentence of 10 (ten) years. The Applicant is behind the bars for the period of 3 (three) years and 8 (eight) months. The Applicant is 60 years of age. The Appeal is of 2025 and there is no possibility that it could be heard finally in the near future. In this view of the matter, I am inclined to allow the Application. Hence, the following order is passed.

ORDER

- (i) Criminal Application is allowed.
- (ii) The substantive sentence imposed upon the Applicant, namely, Shivaji Asaram Kadam, by the learned Additional Sessions Judge, Aurangabad, vide Judgment and Order dated 14.01.2025, passed in Sessions Case No.319/2022, is hereby suspended till the final disposal of the Appeal.
- (iii) The Applicant be released on bail on furnishing P.R. bond of Rs.15,000/- (Rupees Fifteen Thousand), with one surety in the like amount.
- (iv) The Applicant shall co-operate in early disposal of the Appeal.
- (v) Bail before the Trial Court.

(vi) The fees of the learned Advocate for the Applicant appointed through legal aid is quantified at Rs.12,000/- (Rs. Twelve Thousand) for this Application, which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.

(vii) The fees of the learned Advocate for the Respondent No.2 appointed through legal aid is quantified at Rs.10,000/- (Rs. Ten Thousand) for this Application, which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad Bench.

(viii) Criminal Application stands disposed off accordingly

2026(1)McrJ57

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From KOLHAPUR BENCH]

(Hon'ble Judge: M S Karnik; Ajit B Kadethankar)

Criminal Writ Petition No 4618 of 2025 **dated 25/11/2025**

Ravindra Dagadu Gaikwad; Vyankatesh Dnyaneshwar Bacchal; Vishal Ramkisan Jadhav

Versus

State of Maharashtra

QUASHING OF CHARGE-SHEET

Indian Penal Code, 1860 Sec. 341, Sec. 504, Sec. 34, Sec. 353, Sec. 323, Sec. 506 - Quashing of Charge-Sheet - Petitioners sought quashing of charge-sheet under various IPC sections alleging obstruction to municipal officers during duty - Incident arose when officials attempted to attach property for tax arrears - Petitioners claimed misunderstanding and absence of intent to obstruct - They expressed remorse and premises now desealed - Long pendency of prosecution noted - Court held continuing proceedings after long lapse would constitute abuse of process - Considering nature of allegations and settlement approach, charge-sheet quashed - Petition Disposed

Law Point: When prosecution persists for long period over trivial allegations lacking mens rea, and parties show bona fides, continuation amounts to abuse of process justifying quashing under inherent powers.

Acts Referred:

Indian Penal Code, 1860 Sec. 341, Sec. 504, Sec. 34, Sec. 353, Sec. 323, Sec. 506

Counsel:

Vikrant V Phatate, Pankaj Deokar

JUDGEMENT

M.S. Karnik, J.- [1] Heard Mr. Phatate, learned Counsel for the petitioners and Mr. Deokar, learned A.P.P, for the respondent State.

[2] This petition is filed for quashing of the Charge-sheet bearing RCC No.1071 of 2024 arising out of F.I.R. No.82 of 2014 registered with Foujdar Chawadi Police Station, Solapur for the offences punishable under sections 353, 341, 323, 504, 506 and 34 of the Indian Penal Code.

[3] Facts of the case in brief are that petitioner No.1 was then the Director of Kai. Sushilatai Gaikwad Bahu-uddeshiy Sanstha, Kegaon, which is a Public Trust. The petitioner No.2 was Office Superintendent and the petitioner No.3 was serving as Accountant at the said Sanstha. Learned Counsel submits that the petitioners were under the impression that it was a Public Trust and hence there was no necessity to pay the Corporation tax. Nevertheless, the petitioners were paying requisite taxes to the Solapur Municipal Corporation (for short "Corporation").

[4] The petitioners had filed one complaint before the Chief Judicial Magistrate, Solapur against Commissioner of the Corporation on 27th August, 2013. It is the submission of the learned Counsel for the petitioners that by keeping grudge in mind, a notice was issued by the Corporation on 23rd December, 2023 to seal the premises of the petitioners.

[5] The complainant who was In-charge Superintendent of the Corporation filed a complaint on 6th March, 2014 alleging that when he and his staff had gone to attach the property, as there were arrears of tax on the part of the Sanstha, the petitioners did not permit them to perform their duty, stating that an appeal was preferred in the High Court against the notice of attachment. It is alleged that on 7th March, 2014 at about 11.30 a.m, the complainant along with his staff went to office of the said Sanstha, calling upon the petitioners to pay the tax. On the very same ground, that an appeal was filed in the High Court, the petitioners obstructed the complainant from discharging their duties. It is further submitted that the petitioners locked the main gate and obstructed the complainant. It is further submitted that the petitioners abused the complainant. Pursuant to the First Information Report, investigation was carried out and charge-sheet came to be filed.

[6] Learned A.P.P submitted that the ingredients of the offence are made out. It is further submitted that the petitioners are guilty of obstructing the complainant, who was discharging his duty as an officer of the Corporation for the purpose of attachment.

[7] Learned Counsel for the petitioners submitted that there was no intention on the part of the petitioners to obstruct the complainant in discharging his duties. It is submitted that the premises have now been desealed. In fact, the petitioners are regularly paying taxes. It is further submitted that though the petitioners do not admit that they have committed the offence alleged, nonetheless, they are expressing remorse for what had happened as their intention was only to point out that the petitioners had filed an appeal against the order of attachment before the High Court and hence, action be deferred. Nonetheless, later on, the premises were attached. The petitioners are now conducting the activities of the Sanstha peacefully after the attachment was lifted.

[8] The incident is of the year 2014. The petitioners have faced the prosecution for long period of time. In our opinion, considering the nature of the allegations, continuing the proceedings any further would be an abuse of the process of the Court. It is submitted that even as of date, the case has not been committed to the Sessions Court. There is no dispute that the petitioners had filed a complaint before the learned Chief Judicial Magistrate, Solapur against the Commissioner of Corporation on 27th August, 2013. Learned Counsel for the petitioners submitted that because of the complaint filed, as a counterblast, the action was taken against them.

[9] Be that as it may, learned Counsel for the petitioners, on instructions of the petitioners, submits that the petitioners will not proceed with the complaint dated 27th August, 2013, filed against the Commissioner of Corporation before the Chief Judicial Magistrate, Solapur. Learned Counsel for the petitioners undertakes to withdraw the said complaint and/or to co-operate with the concerned for quashing the same.

[10] We are, therefore, inclined to allow the petition in terms of prayer clause (b) which reads thus;

"b) By issuing an Appropriate Writ and Order, this Hon'ble Court quash the Charge sheet bearing RCC No.1071 of 2024 arising out of FIR No.82/2014 registered at Foujdar Chawadi Police Station, Solapur for offence U/s. 353, 341, 323, 504, 506, 34 of I.P.C".

[11] The petition is disposed of

2026(1)McrJ59

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

(Hon'ble Judge: Sandipkumar C More; Y G Khobragade)

Criminal Writ Petition No. 1319 of 2025 **dated 24/11/2025**

Ibbu Kashim @ Kasim Nuriwale

Versus

*State of Maharashtra; District Magistrate, Beed; Superintendent of Police, Beed;
Additional Superintendent of Police, Ambajogai; Officer Incharge*

PREVENTIVE DETENTION BOOTLEGGING

Maharashtra Prohibition Act, 1949 Sec. 65 - Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons (And Video Pirates) Act, 1981 - Preventive Detention Bootlegging - Petitioner detained as bootlegger under MPDA Act - Detention based on two prohibition offences and statements of secret witnesses - No Chemical Analyser report showing seized liquor injurious to health - Witness statements stereotype and not showing disturbance to public order - Court observed absence of CA report prevented subjective satisfaction

of detaining authority regarding danger to public health - Acts indicated breach of law and order, not public order - Detention order arbitrary and unsustainable - Quashed - Petition Allowed

Law Point: Detention under MPDA for bootlegging requires material such as CA report proving liquor injurious to public health; stereotype witness statements and routine prohibition offences do not establish disturbance of public order.

Acts Referred:

Maharashtra Prohibition Act, 1949 Sec. 65

Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons (And Video Pirates) Act, 1981

Counsel:

Sudarshan J Salunke, S P Sonpawale

JUDGEMENT

Sandipkumar C. More, J.- [1] Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocate for the petitioner and learned APP for the State at the admission stage.

[2] The petitioner, who is a bootlegger, has challenged the order No.2025/RB-Desk-1/POL-1/MPDA-12 dated 30/06/2025 passed by the District Magistrate, Beed, whereby he has been detained and also the approval order dated 09/07/2025 and the order dated 29/08/2025 passed by the Section Officer, Government of Maharashtra, Home Department (Special), on the ground that the said orders are arbitrary and have been issued without proper subjective satisfaction, by invoking powers of this Court under Article 226 of the Constitution of India.

[3] Learned counsel Mr. S. J. Salunke, appearing for the petitioner, submits that respondent No. 2 has considered only two offences .i.e. Crime No. 30 of 2025 under Section 65(f)(e) of the Maharashtra Prohibition Act, 1949 and Crime No. 49 of 2025 under Section 65(f) of the said Act. Both registered with Ambajogai (Rural) Police Station, out of total nine crimes and one preventive action under Section 93 of the Prohibition Act. He further points out that, in the preventive action, a final bond of Rs.25,000/- has already been taken from the petitioner. He submits that respondent No. 2 has erroneously relied upon the statements of secret witnesses "A" and "B" to conclude that there was a disturbance to public order. According to him, those statements are stereotype and at the most, could reflect a breach of personal security, but do not amount to disturbance of public order. He specifically submits that though it is alleged that the petitioner is dealing in country-made liquor, no Chemical Analyzer's reports in respect of the two crimes were placed before the Detaining Authority to substantiate that the petitioner was involved in the sale of illicit country liquor at the relevant time. He further submitted that there is nothing on record to show that the

alleged liquor was containing poisonous material to deter the public health. In support of his submissions, learned counsel relies on the following judgments.

A) Sandip Haridas Patil vs. State of Maharashtra and another, 2025 3 MhLJ(Cri)130;

B) Armansingh Mansingh Tak vs. District Magistrate, Nagpur, 2024 AIR Online BOM 1430 &

C) Criminal Writ Petition No.582 of 2025 (Narayan Vasudev Ghumare vs. The District Magistrate, Beed and other delivered by this court [Coram: Smt. Vibha Kankanwadi & Sanjay A. Deshmukh, JJ.] on 17/06/2025.

[4] On the contrary, the learned APP strongly supported the detention order issued against the petitioner. According to him, the petitioner is a "dangerous person" as defined under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-offenders, Dangerous Persons and Video Pirates Act, 1981 (for short, "MPDA"). He submitted that the detention order under challenge is not based merely on the two offences and the statements of the secret witnesses, but on the overall activities of the petitioner, which demonstrate that he is regularly involved in the production of country-made liquor. Such activities, according to the learned APP, not only disturb public order but also adversely affect the health of the public at large. He further contended that there is no illegality in the procedure adopted while recording the in-camera statements of the secret witnesses and merely because the allegations in those statements are similar in nature, it only indicates that due to the terror created by the petitioner, people are hesitant to lodge complaints against him. Hence, it cannot be said that the petitioner's activities do not affect public order. Ultimately, he prayed for dismissal of the petition. The learned APP also relied upon the judgment in **Criminal Writ Petition No. 3804 of 2023 (Saraswati Santosh Rathod vs. Commissioner of Police, Pune City & Ors.), delivered by this Court at the Principal Seat, Bombay (Coram: Bharati Dangre & Manjusha Deshpande, JJ.) on 20/06/2024.**

[5] Admittedly, on going through the impugned order of detention passed by respondent No. 2, it is seen that as many as nine crimes were registered against the petitioner during the period from 05/07/2023 to 09/02/2025. It further appears that prohibitory action under the Prohibition Act has already been taken against the petitioner by initiating Chapter Case No. 1 of 2025, in which a final bond of Rs. 25,000/- has been obtained from him. However, the detention order indicates that the Detaining Authority has primarily considered the last two crimes, bearing Crime Nos. 30 of 2025 and 49 of 2025, registered with Ambajogai (Rural) Police Station under the Prohibition Act, along with the statements of two secret/confidential witnesses.

[6] According to the learned counsel for the petitioner, though the Detaining Authority has considered the aforesaid crimes, but before passing the order there was no material to show that the Authority had arrived at a subjective satisfaction regarding the dangerous nature of the petitioner towards the public at large. He relied upon the

judgment of the Hon'ble Apex Court in District Collector, Ananthapur vs. V. Laxmanna, 2005 MhLJOnline(Cri)(SC) 49, wherein it has been observed as follows:

"7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of the public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy such material should also be given to the detenu to afford him an opportunity to make an effective representation.

8. Therefore, while holding that dealing with arrack which is dangerous to public health would become an act prejudicial to the maintenance of public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of the such material should be given to the detenu." On going through the aforesaid observations, it is clearly evident that in order to determine whether the act of preparing illicit country liquor is dangerous to public health, the Detaining Authority must be satisfied on the basis of the Chemical Analyser's report that the country-made liquor in question was injurious to public health. It is extremely important to note that in the present case as well, no such CA reports were before the Detaining Authority at the time of passing the impugned order. Though the learned APP, relying on the documents, pointed out that CA reports were obtained showing 3%, 11% and 5% alcohol content in the liquor seized in the aforesaid two cases, but the record pertaining to the impugned order does not indicate that these reports were placed before the Detaining Authority. Moreover, the impugned order also does not reflect that the Detaining Authority had arrived at subjective satisfaction by referring to those CA reports.

[7] Further, insofar as the statements of the two secret/confidential witnesses are concerned, the Hon'ble Apex Court in case of Arjun Ratan Gaikwad vs. State of Maharashtra and Others, 2024 MhLJOnline(Cri) (SC) 85, arising out of SLP (Cri.) No. 12516 of 2024, has observed as follows:

"17. Insofar as the statement of two unnamed witnesses are concerned, the allegations are as vague as it could be. In any case the statements which are stereotype even if taken on its face value would show that the threat given to the said witnesses is

between the appellant and the said witnesses. The statements also do not show that the said witnesses were threatened by the appellant in the presence of the villages which would create a perception in the mind of the villagers that the appellant herein is a threat to the public order."

[8] On an independent perusal of the said statements, what can be gathered is that at the most, the acts of the petitioner referred to therein may be considered dangerous to individuals; however, they cannot be said to be prejudicial to the maintenance of public order. Moreover, in the absence of a CA report, it also cannot be determined whether the liquor was injurious to public health. Admittedly, there is nothing on record to show that the illicit country liquor produced by the petitioner contained any poisonous substance.

[9] The learned APP heavily relied upon the judgment of the **Coordinate Bench of this Court at the Principal Seat, Bombay (Coram: Bharati Dangre & Manjusha Deshpande, JJ.) in Criminal Writ Petition No. 3804 of 2023 (Saraswati Santosh Rathod vs. Commissioner of Police, Pune City and Others), delivered on 20/06/2024**, wherein the petition challenging the detention order passed against the petitioner therein, who was a bootlegger, came to be dismissed. However, on going through the said judgment, it is evident that the Chemical Analyser's report was on record, which showed the presence of 24% ethyl alcohol. Per contra, in the present case, no such CA reports are on record. It is extremely important to note that the Coordinate Bench of this Court at the Nagpur Bench has held in *Armansingh Mansingh Tak vs. District Magistrate*, 2024 AIR Online Bom 1430, as follows:

"19. The samples of the seized articles were sent for Chemical Analysis. The report of Chemical Analysis shows that "the sample contains 16.42% V/v of Ethyl alcohol in water. It is not a medicinal antiseptic / toilet preparation for a flavouring material". The opinion of the medicine and Toxicology Government Medical College Nagpur was obtained and the Assistant Professor Department of Foreign-sic medicine has opined that

" the alleged liquor does not contain any poisonous form of Alcohol like methyl alcohol any preparation containing ethyl alcohol in concentration mentioned in the letter when consumed excessively is injurious to health and likely to cause death." It is clearly shows that it depend on consumption of quantity of liquor. Hence, the opinion is also in favour of the petitioner as no poisonous form of alcohol is found."

[10] Thus, even though it was found that there was 16.42% V/v of ethyl alcohol in the sample and though it was not a medicinal antiseptic/toilet preparation or a flavouring material, the sample did not contain any poisonous form of alcohol such as methyl alcohol. Therefore, even if the CA reports which were admittedly not before the Detaining Authority at the time of passing the impugned order indicating that the seized liquor contained a certain percentage of alcohol, they do not show the presence of any poisonous substance. Consequently, even on presumption, it cannot by any

stretch of imagination be held that the country-made liquor produced by the petitioner was dangerous to public health.

[11] In view of the observations made by the Coordinate Bench of this Court as well as the Hon'ble Apex Court, it appears that the petitioner may, at the most, have created a law-and order situation, but not a disturbance to public order. The impugned order clearly reflects that it has been passed without adequate supporting material and without proper subjective satisfaction. The material on record is undoubtedly insufficient to categorize the petitioner as a "dangerous person" or "bootlegger." Accordingly, the impugned orders cannot be sustained and the petition deserves to be allowed.

In the result, the following order is passed:

ORDER

A) The writ petition stands allowed in terms of prayer clauses- B, C, D & E.

B) The impugned order bearing No.2025/RBDesk-1/POL-1/MPDA-12 dated 30/06/2025, passed by the District Magistrate, Beed as well as the approval order bearing the same number and date, and the order dated 29/08/2025 passed by the Section Officer, Government of Maharashtra, Home Department (Special), are hereby quashed and set aside.

C) The petitioner, Ibbu Kashim @ Kasim Nuriwale, shall be released forthwith, if not required in any other offence.

D) Rule is made absolute in above terms.

E) The criminal writ petition is disposed of accordingly

2026(1)McrJ64

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Bharati Dangre; Shyam C Chandak)

Writ Petition No 5722 of 2025 **dated 24/11/2025**

Shazaib Sabir Patel

Versus

State of Maharashtra & Anr

ILLEGAL DETENTION

Constitution of India Art. 21 - Code of Criminal Procedure, 1973 Sec. 167 - Bombay Police Act, 1951 Sec. 135, Sec. 37 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 189, Sec. 190, Sec. 351, Sec. 109, Sec. 118, Sec. 352, Sec. 187, Sec. 191 - Illegal Detention - Petition filed by relative of two accused arrested in a criminal case under provisions of BNSS and Bombay Police Act - Direction sought for their production before Magistrate and declaration that continued detention in Talaja Central Prison without valid remand order is illegal - Arrest and remand orders examined from record showing no extension

of magisterial custody after fixed date - Petitioner contended non-production of accused either physically or through video conferencing violates Article 21 of Constitution - Authority admitted absence of further remand but urged that production would be made and bail remedy open - Court examined provisions of BNSS and held judicial custody requires express sanction by order of competent Magistrate and cannot be deemed extended by default - Detention beyond remand period without valid order lacks legal sanction and amounts to violation of personal liberty - Custody directed to be regularised in accordance with law and accused ordered to be produced before competent Magistrate forthwith - Petition Partly Allowed

Law Point: Judicial custody cannot continue automatically without a specific extension order by Magistrate - Detention of an accused after expiry of remand period without valid order constitutes violation of Article 21 and is illegal; production before Magistrate is mandatory under Section 187 of BNSS

Acts Referred:

Constitution of India Art. 21

Code of Criminal Procedure, 1973 Sec. 167

Bombay Police Act, 1951 Sec. 135, Sec. 37

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 189, Sec. 190, Sec. 351, Sec. 109, Sec. 118, Sec. 352, Sec. 187, Sec. 191

Counsel:

Payoshi Roy, Palak Dubey, Ulkesh Gangurde, Tanveer Khan

JUDGEMENT

[1] The Writ Petition is filed by the relative and next kin, being the cousin brother of Safvan Abdul Rauf Patel and Afnan Abdul Rauf Patel , who are arraigned as Accused Nos.2 and 3 in F.I.R.No.0274 of 2025 and arrested by Taloja Police Station.

The Petition seek a direction to the Superintendent of Taloja Central Prison to produce them before the Court, either physically or through video conferencing.

A declaration is also sought that their continued detention in Taloja Central Prison is illegal, arbitrary and in violation of Section 187 of the Bhartiya Nagarika Suraksha Sanhita, 2023 (for short, "BNSS") as well as Article 21 of the Constitution of India.

[2] Pleadings in the Petition being complete, we have taken up the same for hearing at the stage of admission, and, hence, we issue 'Rule', which is made returnable forthwith.

[3] We have heard learned Advocate Ms.Payoshi Roy with Ms.Palak Dubey for the Petitioner and learned Additional Public Prosecutor, Mr.Tanveer Khan for the State.

[4] F.I.R.No.274 of 2025 is registered with Taloja Police Station on 08/08/2025 on the complaint filed by one Ammar Harun Madar, with four persons being named as accused alongwith one unknown person. The Complainant alleged that on 08/08/2025

at around 14.50 hours, four named accused persons alongwith 8 to 10 unknown persons, in order to revenge the act of CIDCO in removing the encroachment of motor mechanic garage on a complaint filed by the Sayyed family, mounted assault with means of knife, iron and wooden rods, with an intention to kill. When the Complainant went to the rescue of the injured persons, even he was assaulted and the assailants questioned their act of removing the garage through CIDCO.

The accusation resulted in invocation of Sections 109, 118(1), 189(1), 189(2), 191(3), 190, 352, 351(2) of BNSS and Sections 37(1) and 135 of the Maharashtra Police Act, 1951.

[5] The persons on whose behalf the present proceedings are filed, were arraigned as Accused No.2-Safnan and Accused No.3-Afnan and both were arrested on 09/08/2025 at 16.41 hours.

Pursuant to the production before JMFC, Panvel Court, Panvel, they were remanded to police custody on finding substance in the application seeking remand by the police, for the purposes of investigation.

[6] In the subject C.R, Accused No.1 was arrested on 08/08/2025 and produced before the JMFC, Panvel Court, Panvel on 09/08/2025, who granted his Police Custody Remand (PCR) till 14/08/2025. As far as Accused Nos.2 and 3 are concerned, they were arrested on 09/08/2025 and produced before the JMFC, Panvel Court, Panvel on 10/08/2025 and they were remanded in PCR till 14/08/2025. All the three Accused were produced before the JMFC, Panvel on 14/08/2025 and the PCR was extended till 18/08/2025, which was further extended by one day.

According to the Petitioner, the Magistrate remanded Accused Nos.1 to 3 to Magisterial Custody Remand (MCR) till 01/09/2025, but it is the specific contention advanced on behalf of the Petitioner that thereafter, there is no order passed by the Magistrate, extending the remand of Accused Nos.2 and 3. It is also specifically pleaded that they were not produced physically or through video conferencing before the Magistrate, which is gross violation of Article 21 of the Constitution of India and as a result, the accused continue to be incarcerated in Taloja Central Prison from 01/09/2025, without their remand being extended.

[7] The Petitioner, a close relative of the accused, through an Advocate obtained certified copies of all the remand applications and the corresponding orders to find that there is no order extending the Magisterial Custody Remand (MCR) of the accused persons after 01/09/2025. It is also pleaded that the Petitioner visited Taloja Central Prison to submit a written application seeking information regarding the current status of the accused persons and the details entered in the warrant register to find whether the accused were produced physically or through video conferencing, but the application was not accepted and repeated correspondence made by him to seek necessary information did not yield any result and, therefore, the Petitioner is constrained to file the present Petition seeking production of Accused Nos.2 and 3 in

C.R.No.274 of 2025 to secure their release, as their detention without further remand order after 01/09/2025, is pleaded to be illegal.

[8] Ms.Roy, the counsel for the Petitioner, on taking us through the remand orders, would submit that the detention of the accused persons is illegal and it lacks the sanction of law and, hence, they are entitled to be set at liberty. She would submit that judicial custody just like police custody can only be imposed by way of a remand order and it deserve extension from time to time, but in its absence, it becomes illegal. According to her, the judicial custody cannot be considered to be extended by default under Section 187 of BNSS and necessarily there has to be an order sanctioning judicial custody and even extending the same as the extension of judicial custody cannot be assumed and it should be extended by way of a lawful order.

According to Ms.Roy, extension of judicial custody can never be considered as formality, as an accused loses his liberty, if he is detained illegally. According to her, BNSS does not distinguish between the first remand and subsequent remand and at either stage, it contemplate application of mind by the judicial officer and passing of an order, by keeping in mind the rigors of the procedure set out in the Code/BNSS and on failure to adhere to the same, according to her, must result in the accused being released on bail.

[9] By relying upon the decision in the case of **V. Senthil Balaji Vs. State represented by Deputy Directors & Ors**, 2024 3 SCC 51 she would urge that writ of habeas corpus is maintainable, when the accused is seeking release from custody, which is without a sanctioning order i.e. a remand order, though the Court may not issue a writ of habeas corpus to release a person in judicial custody pursuant to a valid remand order, however, when the remand is without jurisdiction or passed without application of mind, definitely writ court shall intervene. She would also place reliance upon the decision of the Apex Court in the case of **Ram Narayan Singh Vs. State of Delhi & Ors.**, 1953 1 SCC 389 with reference to Section 167 of the Criminal Procedure Code, 1898, where it is held that detention without remand order is illegal and the custody of the four accused persons depriving them to their personal liberty was frowned upon and they were held entitled for their release, when the procedure of remand was not followed. She would also place reliance upon the decision of this Court in the case of **Sonu Madanlal Yogi Vs. The State of Maharashtra & Anr. (Writ Petition No.3651 of 2011 decided on 13/12/2011)**, where the Division Bench has taken a view, that in absence of the respondents producing any valid remand order passed against the petitioner for continued detention in connection with the alleged offence, the detention is liable to be declared illegal, resulting into his release from such detention.

[10] Learned Additional Public Prosecutor, Mr.Tanveer Khan, would place reliance upon the statutory scheme and submit that the non extension of remand and specifically in judicial custody is different than the non existence of a remand order itself and though it is not disputed by him that there is no further extension of the remand, he would submit that the accused persons would be produced before the

Magistrate soon, as their release on bail is possible and in any case, being in judicial custody, the accused have not deemed it appropriate to file any bail application, by this route, they cannot secure their release. Mr.Khan, therefore, would submit that the Petition do not deserve any indulgence and is liable to be dismissed.

[11] In the wake of the arguments advanced, we have perused the scheme comprised in the Bharatiya Nagarik Suraksha Sanhita, 2023 contained in Chapter XIII, commencing from Section 173 in form of 'Information in Cognizable Offences' being provided to the police and the power of the police officer to investigate.

The police officer, who is empowered to investigate a cognizable offence, shall complete the investigation in the manner prescribed in Section 176 and on completion of investigation, he shall forward his report, without unnecessary delay to the Magistrate, who is empowered to take cognizance of the offence on a police report in the prescribed format.

During the course of investigation, when a police officer arrest any person, without an order from Magistrate and without warrant, if he has reason to believe on the basis of the complaint, information or suspicion that such person has committed an offence, then it is imperative for him to produce him before the Magistrate and he shall not detain him in custody for a period extending twenty-four hours, excluding the time necessary for journey from the place of arrest to the Magistrate's Court.

[12] Section 187 of BNSS prescribe the procedure, when a person is arrested and detained in custody and it appears to the Investigating Officer that the investigation cannot be completed within twenty-four hours and there are grounds for believing that the accusation or information is well-founded, then he shall produce him before the Magistrate.

The Magistrate to whom the accused person is forwarded under sub-section (2) irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody, as such Magistrate thinks fit and if has no jurisdiction to try the case and consider the further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction. Subsection (3) of Section 187 which is a slight deviation from the existing procedure in Section 167 of the Code of 1973, reads thus:-

"(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every

persons released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter."

Sub-section (4) of Section 187 significantly provides that no Magistrate shall authorise the detention of the accused in custody of the police unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police. However, the Sanhita permits the Magistrate to extend further detention in judicial custody on production of the accused, either in person or through the audio-video electronic means.

A proviso appended to sub-section (5) of Section 187 imposes a restriction in detaining a person otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison by the Central Government or the State Government.

[13] The procedure prescribed in Section 187, necessarily requires production of an accused before the Magistrate and application of mind by the Magistrate, as to whether he deserves to be remanded to police custody or judicial custody. While authorising the detention of the accused in custody of police for the first time and subsequently every time till the accused remains in the custody of the police, the accused shall be produced before the Magistrate in person, but once he is remanded to judicial custody, there can be extension of judicial custody on his production, through audio-video electronic means. Sub-section (7) of Section 187 makes it mandatory for the Magistrate authorising detention in the custody of police to record his reasons for so doing..

[14] From the statutory scheme incorporated in Section 187, it appears with clarity that no person, who is arrested and detained in custody, shall be so detained beyond period of twenty-four hours and the Investigating Officer shall present him to the nearest Magistrate and the Magistrate to whom the accused person is forwarded, is empowered to authorise, from time to time, his detention in such custody as he thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days, out of detention period of sixty days or ninety days, as the case may be. The Magistrate may, however, authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but in no case, his detention shall be authorised in custody for a total period exceeding ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more; sixty days when the investigation relates of any other offence and, on expiry of the said period of ninety days or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to furnish bail.

[15] From reading of the aforesaid provision, it becomes clear that an indefeasible right accrues to an accused person, if the investigation is not completed within a period of ninety days/sixty days and accused still continue to be in detention. The legislature has, therefore, necessarily provided for the consequences, when the investigation is not

complete and if the accused is prepared to and does furnish bail, he shall be released on bail.

When the legislature intended to provide for the consequences, it did so. However, we find that there was no provision in the Code of 1973 or in BNSS providing for the consequences for non extension of the judicial custody remand of the accused and according to us, it is too far fetched to hold that because there is no extension of judicial custody by any remand order, the accused is entitled to be released on bail. In fact, sub-section (4) of Section 187 makes it clear that whenever an accused is produced from police custody, he shall be physically presented before the Magistrate on every occasion whenever such extension is granted, but as far as the judicial custody is concerned, the Magistrate may extend further detention on production of accused, either in person or through the audio-video electronic means.

Whenever a police custody remand is granted by the Magistrate, he shall verify whether the police custody is necessary and whether by remanding the accused to police custody, he would render any assistance in investigation of the offence, and also when the police custody remand is extended to ascertain whether the accused has complaints of any type, while he was in their custody. However, when an accused is remanded to judicial custody, he is placed in a prison, where he is under the control and supervision of the Judicial Magistrate and not subjected to investigation in the jail premises by the Investigating Officer, without permission of the Magistrate, and in a sense, he is in safe environment and, therefore, it is permissible to have his production, while extending the remand through audio-video electronic means.

[16] In the scheme of the Code of Criminal Procedure as well as BNSS, on accused being arrested in connection with an offence by a police officer, he can be detained beyond twentyfour hours only with the permission of the Judicial Magistrate.

While granting police custody, the need of his custody shall be specifically ascertained by the Magistrate. However, when he is not to be remanded to police custody, an accused shall be remanded in judicial custody where he remains under the authority of the Judicial Magistrate and is lodged in Central or State prison.

Though, there is no timeline prescribed for completion of investigation of a crime, the accused shall remain in judicial custody till such time the Magistrate take cognizance of the offence and the Court, after taking cognizance of the offence, or commencement of trial, if find it necessary to postpone the proceedings, he may do so for such time as he considers reasonable and may by warrant, remand the accused in custody, subject to a proviso that no Magistrate shall remand the accused to custody for a term exceeding fifteen days at a time. Since, there is no maximum timeline prescribed for completion of investigation, but by restricting the maximum period, when the accused can be detained in custody, there exists a provision of he being released on default bail, if the charge-sheet is not filed within 60/90 days, i.e. the investigation is not continued within that period. It is not that the investigation of an offence cannot be continued beyond the period of 60/90 days as contemplated under

Section 167 of Cr.P.C./Section 187 of BNSS, but in such a contingency, since the power of the Magistrate of detention gets exhausted and the accused cannot be further detained in custody, by way of a mandate, the accused shall be released on bail, if he is prepared to and does furnish bail.

Therefore, after the police custody of fifteen days, as contemplated under the Code of 1973 the initial fifteen day, but the specific provision under BNSS where the police custody can be availed in parts, at any time during initial 40 days or 60 days of the period of detention, the accused shall remain in judicial custody, with a time limit specified. It is during the period when the accused is in judicial custody, he is entitled to seek his release on bail by filing application under Section 483 of BNSS and considering the merits of the accusations and several other factors, the application shall be considered. Since the accused continue to remain in custody till he is released on bail either by securing the bail or when he deserve his release on bail, since the investigation is not completed within 60/90 days, he remains in judicial custody. It may be true that the judicial remand has to be further extended by every fifteen days on production of accused, but the question that arises for our consideration is, whether in absence of such extension, the accused is entitled to be released on bail and our answer to the said question is in the negative, in absence of any specific provision to that effect, either in the Code of 1973 or BNSS 2023.

[17] Ms.Roy has heavily relied upon the decision of the Apex Court in the case of **Ram Narayan Singh** (supra) and we must note that the said decision involves the old Criminal Procedure Code, 1898, and the facts itself disclose that the detention of the accused was sought to be justified on the basis of two remand orders; the one alleged to have been passed by the Additional District Magistrate, Delhi on 06/03/1953 and the second alleged to have been passed by the trying Magistrate at about 3.00 p.m., on 9th March, while adjourning the case. It can thus be seen that the first remand order is by the Magistrate and it expired on 9th March. It appears that thereafter the accused was produced before the trying Magistrate on 9th March and the Magistrate was proceeding at that stage under Section 344 of the Code of Criminal Procedure and when he decided to adjourn the case pending before him, it was necessary for him " to remand by warrant the accused if in custody,". The trying Magistrate adjourned the proceedings till 12th March and there was no order on record, though some documents in form of chits were produced extending the remand, but the Court refused to observe the same. The trying Magistrate issued warrant with an endorsement, "Remanded to judicial till 11th March, 1953".

The facts of the case are clearly distinguishable as it deal with Section 344 of the Code of Criminal Procedure, which is the corresponding Section 309, which is a power to adjourn the proceedings and sub-section (2) of Section 309, contemplate a stage after taking cognizance of an offence or commencement of trial and the Court consider it necessary to postpone or adjourn the proceedings and while it is so done, the Court may by warrant, remand accused if in custody, with a proviso being appended that no

Magistrate shall remand a accused person for a term exceeding fifteen days at a time. The decision in **Ram Narayan Singh** (supra) is, therefore, dealing with the production before the trying Court and when the proceedings were adjourned, the accused is remanded to judicial custody on the further date. Thus, in our opinion, the aforesaid decision is not of any succour to the Petitioner, who has sought release of Accused Nos.2 and 3 in the subject F.I.R.

[18] In **Sonu Madanlal Yogi** (supra), we find that the said case deal with a non production of valid remand order passed against the petitioner, for continued detention in connection with the alleged offence and when the learned A.P.P. canvassed the argument that the order passed by the Sessions Court may be construed to mean that the petitioner would be continued in judicial custody upto a further date, we find that this case is also a case under Section 309 of the Code of Criminal Procedure, as it was urged that a formal remand order was not necessary and non mentioning of the fact in the order of the court cannot enure to the benefit of the Petitioner.

The said decision is also in relation to Section 309 and does not take the case of the Petitioner any further.

[19] In **V.Senthil Balaji** (supra), it is held that a writ of habeas corpus shall only be issued when detention is illegal and as a matter of rule, remand order by judicial officer, culminating into a judicial function cannot be challenged by way of writ of habeas corpus, as it is open to the person aggrieved to seek other statutory remedies.

Making out a very strong case of non compliance of the mandatory provisions, when there is complete non application of mind, it is held that the Court may entertain the petition, seeking writ of habeas corpus. Upon non following the mandatory legal requirements, the detention may be illegal but it is categorically held that there is difference between the detention being illegal for not following the statutory mandate and wrong or inadequate reasons, being provided in the judicial order and it is only in the former case, a writ of habeas corpus may be entertained. A challenge to an order of remand on merit shall be made in tune with the statute, when non compliance of a provision may entitle a party to invoke extra ordinary writ jurisdiction.

[20] The present case is not a case of no valid remand order, as Accused Nos.2 and 3 on being remanded to police custody, were further remanded to judicial custody by a validly passed remand order, which continued till 01/09/2025, but admittedly there is no further extension.

It is not in dispute that there has to be an extension of the judicial custody every fifteen days by the Magistrate and the Magistrate is required to apply his mind. However, the nature of enquiry, which is contemplated when the accused is to be remanded to police custody and in absence thereof, when he is remanded to judicial custody, and its further extension are completely different tasks, as while remanding an accused to the police custody, on an application made by the Investigating Officer, the Magistrate shall apply his mind, whether there is a necessity for police remand or he can be send to judicial custody. It is also well accepted that it is obligatory on part

of the Magistrate to apply his mind and not to pass the order automatically or in a mechanical manner.

In absence of any provision in the Code or the Sanhita prescribing the consequence of not extending the judicial custody remand on account of non production of the accused before the Magistrate, we do not find any legal basis for the submission advanced by Ms.Roy that the accused persons are entitled to be released on bail or to be released from custody. In fact, upon being remanded to judicial custody, it was open for them to file application for bail, which could have been duly considered, but instead, the Petitioner has chosen to file a writ of habeas corpus on the ground that the detention of the accused persons is illegal.

In any case, since we are of the view that there is no provision in BNSS contemplating the release of an accused because there is no extension of judicial custody by the Magistrate beyond the first remand and which would secure their release, finding no merit and substance in the Petition, we dismiss the same.

However, at the same time, we direct that Accused No.2- Safvan Abdul Rauf Patel and Accused No.3-Afnan Abdul Rauf Patel in C.R.No.274 of 2025 shall be produced before the Magistrate forthwith for appropriate order being passed, extending their judicial custody

2026(1)MCrJ73

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Dr Neela Gokhale)

Bail Application No 429 of 2025 **dated 21/11/2025**

Arbaz Aslam Shaikh

Versus

State of Maharashtra

BAIL UNDER NDPS

Code of Criminal Procedure, 1973 Sec. 439 - Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 50, Sec. 29, Sec. 43, Sec. 37, Sec. 22, Sec. 42, Sec. 57 - Bail under NDPS - Applicant arrested for possession of 100 grams of Mephedrone and alleged involvement in drug trafficking - Contended non-compliance of Sec.42 and 50 NDPS Act, delay in FIR and long custody - Prosecution argued search under Sec.43 valid as recovery during patrolling, and compliance made - Court examined Section 37 restrictions and found commercial quantity involved - Observed applicant failed to show reasonable grounds for believing he not guilty and that continued custody justified under statutory bar - Long incarceration alone insufficient to override limitations of Sec.37 - Bail refused considering gravity of offence and recovery circumstance - Bail Rejected

Law Point: For offences involving commercial quantity under NDPS Act, bail can be granted only if court satisfied that accused not guilty and unlikely to reoffend; mere long custody not sufficient to relax Sec.37 rigour

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 439

Narcotic Drugs and Psychotropic Substances Act, 1985 Sec. 8, Sec. 50, Sec. 29, Sec. 43, Sec. 37, Sec. 22, Sec. 42, Sec. 57

Counsel:

Khan Sherali Shakhigul, Tabish Shaikh, Megha S Bajoria, N B Chavan

JUDGEMENT

Dr. Neela Gokhale, J.- [1] The Applicant seeks his release on bail in connection with C.R. No.92 of 2023 dated 3rd November, 2023, registered with the ANC, Azad Maidan Unit, for the offences punishable under Sections 8(c), 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').

[2] The facts of the case, in brief are that, on 2nd November, 2023, when the officials of the ANC, Azad Maidan Unit, were out for patrolling, at about 10:30 p.m., they found one person lurking in suspicious circumstances near the Jogeshwari Police station bus stop next to an electric pole on the service road, Western Express Highway, Southwards, Jogeshwari (E). The Police made enquiries with him and asked him for his identity. The said person started running away on his two-wheeler, the Police stopped him. They identified themselves as Police Officers and started questioning him. Since he gave evasive answers, the Police detained him and proceeded to comply with the statutory provisions of the NDPS Act, including getting Panchas and other material, etc. On his personal search, 100 grams of Mephedrone (MD) was recovered from him. The said contraband was placed in a plastic pouch and stapled. The plastic pouch was in turn kept in an envelope, which was sealed and marked as Exhibit 'A'. The said person was identified as Hardik Chandubhai Solanki, namely, the Accused No.1.

[3] Said Solanki told the Police that he was using the two-wheeler to distribute the contraband. He also told the Police that one Adam Hussain was his supplier and offered to take them to Adam. The Police proceeded with the patrolling to nab said Adam since, they had an apprehension that he will abscond once he learnt about the arrest of Solanki. Thus, they proceeded to look for Adam, as per Solanki's directions.

[4] Solanki took the Police to the shop of one Raza, a keymaker, from which place, Adam operated. Thus, the Police set a trap for Adam. One person came and appeared to be waiting for someone. Solanki identified the said person as Adam. The Police apprehended Adam. After complying with the statutory provisions of the NDPS Act, the Police searched him. When the Police questioned him as to his supplier, he revealed that he had purchased it from the Applicant, who resided in Kalina,

Santacruz. Thus, the Police continued their patrolling, keeping a lookout for the persons involved in the crime.

[5] The Police went to the location revealed by Adam. On seeing the police, the Applicant attempted to run away. However, the Police caught up with him and apprehended him. After following the due process of law, the Police searched the Applicant and recovered 100 grams of Mephedrone in a plastic pouch from the left pocket of his kurta. In this manner, the Applicant came to be arrested on 3rd November 2023.

[6] The Applicant made an application seeking bail before the Special Court, NDPS Act, Greater Bombay. However, by order dated 19th September 2024, the said bail application was rejected. Hence, the Applicant has filed the present Bail Application for the relief as prayed.

[7] Both the counsels sought time to place on record their written submissions. The same are filed by both the counsels on 17th and 18th November 2025 respectively. The same are taken on record.

[8] Mr. Sherali Khan, learned counsel, represented the Applicant and Ms. Megha Bajoria, learned APP, represented the State.

[9] Mr. Khan's arguments are as under:

i) Compliance under Section 42 of the NDPS Act is not made as once the Accused No.2 - Adam shared information regarding the present Applicant, the same ought to have been reproduced in writing and sent to the superior officer, which according to Mr. Khan, was not done.

ii) In case the information was received by the Police on patrolling and the Police apprehended delay in the time spent in reducing the information in writing, it was binding on the Police, to thereafter and as soon as practical, record the information in writing and convey the same to the superior officer.

iii) There was a delay of three hours in lodging the FIR.

iv) The Panchanama was recorded on 3rd November 2023, but the Inventory Panchanama was recorded only on 8th November, 2023.

v) The certification under Section 52A does not certify the correctness of the samples drawn.

vi) There is non-compliance of Section 50 of the NDPS Act.

vii) The Applicant is in custody from 3rd November 2023 and the charges are not framed as yet. The Applicant thus, deserves to be released on bail on the ground of long incarceration.

[10] Per contra, Ms. Bajoria, learned APP representing the State in the matter, submitted as under:

i) Since the entire operation commenced upon a chance recovery during patrolling, strict compliance of Section 42 is not mandatory. It is settled law that searches and seizure during patrolling fall within the scope of Section 43 and not

Section 42. The information regarding Applicant is not based on intelligence received by the Police but during patrolling.

ii) The Applicant was apprehended based on real time information by the co-accused during the course of a continued operation, which does not come strictly under the category of prior information.

iii) Compliance of all the statutory provisions is made. The Applicant was served with a written notice as required under Section 50 and the notice bears his endorsement.

iv) The delay in registering the FIR has no fatal consequences and no prejudice is shown to be caused by the same.

v) The samples were duly drawn, sealed and deposited as per the requirements of the NDPS Act. The Applicant has not demonstrated any tampering.

vi) A detailed action taken report was furnished to the immediate superior officer.

vii) 100 grams of Mephedrone i.e. of commercial quantity was found on the person of the Applicant. Additionally, Rs.15 lakhs cash and 100 zip lock bags were also found in his house indicating his involvement in drug trafficking.

viii) Rigors of Section 37 are not fulfilled, and long incarceration alone is not sufficient to override the mandate of Section 37.

Ms. Bajoria hence, resisted the Bail Application.

[11] I have carefully considered the arguments advanced by the learned counsels for the respective parties and perused the record of the case.

[12] The provisions of Section 37 of the NDPS Act read thus:-

"37. Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause

(b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."

[13] It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person

accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

[14] The expression "reasonable ground" came up for discussion in **State of Kerala and others Vs. Rajesh and others**, 2020 12 SCC 122 and the Supreme Court has observed in paragraph 20 as below:

"20. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence."

"the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

[15] To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dovetailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

[16] In a recent decision of the Supreme Court in the matter of **NCB v. Mohit Agrawal**, 2022 18 SCC 374 observed as under:-

"15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with, and he is unlikely to commit an offence under the Act while on bail."

[17] Returning to the facts of the present case, admittedly, the offending substance was recovered from the pocket of the Applicant. Additionally, material to indicate the

Applicant's involvement in a drug supply operation, was also recovered from his house. The actual contraband recovered is from his person, which did not require the officers to enter into, search any building, conveyance or place.

[18] Mr. Khan has placed reliance on the decision of the Supreme Court in **Karnail Singh v. State of Haryana**, 2009 8 SCC 539. The Supreme Court in its penultimate paragraph, held as under:-

"35. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the Police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of subsections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of section 42. But if the information was received when the Police officer was in the Police station with sufficient time to take action, and if the Police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of section 42 of the Act. Similarly, where the Police officer does not record the information at all, and does not inform the official superior at all, then also it will

be a clear violation of section 42 of the Act. Whether there is adequate or substantial compliance with section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to section 42 by Act 9 of 2001."

[19] I have gone through the said decision carefully. In the facts of the present case, sub clause (b) of paragraph No.35 of the aforesaid decision is attracted, since the Police officers were not in the Police station but on patrolling duty. Thus, while on the move, they received real time information from co-accused regarding movement and involvement of the present Applicant. What they were required to do in these circumstances in compliance of clause (a) to (d) of Section 42 was, thereafter, as soon as practical to record the information in writing and forthwith inform the same to the superior officer.

[20] Admittedly, Mephedrone of commercial quantity was recovered from the person of the Applicant and there was no requirement for the officers to enter the place. Section 43 of the NDPS Act, dealing with the power of seizure and arrest of the suspect in a public place is attracted.

[21] Ms. Bajoria has drawn my attention to a letter dated 3rd November 2023, addressed by the Police officials to their superior officer. No doubt, that the title of the said letter indicates this as a 'special report' as per Section 57 of the NDPS Act. I have gone through the contents of the said report. It is a detailed narration of the events that transpired leading to the arrest of the accused including the Applicant and the circumstances in which the information was received by the Officers, from Adam. Considering that the Applicant was apprehended on account of real time information provided by co-accused and the entire patrolling activity was in a continued sequence, at the very first opportunity, on the date of the Applicant's arrest itself, information was reduced into writing and conveyed to the superior officer. Notwithstanding that the information reduced into writing and forwarded to the superior officer bears the words 'special report', the object of Section 42 that the information received is to be reduced into writing and forwarded to a superior officer is fulfilled. The fact that the said letter bears the words 'special report' does not take away the significance of the contents of the letter that the information regarding the Applicant is reduced into writing and conveyed to the superior officer, as soon as practical. Generally, compliance under Section 42 of the NDPS Act should precede the entry, search and seizure by the officer but in special circumstances involving emergent situations, the recording of information may get postponed by a reasonable period, which is permissible under the law. The question is thus, one of urgency and expediency. In the facts and circumstances of the present matter, I am satisfied that there is no significance non-compliance of Section 42 of the NDPS Act.

[22] In so far as the allegation of Mr. Khan relating to noncompliance of Section 50 requirement is concerned, I have seen the letter dated 3rd November 2023 written by the Police Officer concerned. The letter indicates that the Applicant was apprised of his rights under Section 50 and he has endorsed his understanding of the same in

writing on the said letter. Two panchas have signed the said letter. I am satisfied that requirements of Section 50 of the NDPS Act were complied with.

[23] In the facts of the present case, 100 gms. of MD was recovered from the person of the Applicant. The Applicant is in custody for about two years whereas the maximum punishment for the alleged offence is up to twenty years. The incarceration of the Applicant cannot be considered to be long incarceration, having regard to the maximum punishment for the offence. The Supreme Court in its recent judgment in the matter of **Union of India v. Vigin Varghese**, 2025 INSC 1316 has observed that finding of prolonged incarceration as justification for bail is not a causal observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. The Apex Court further observed that a conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon, appreciation of evidence, which would be in the domain of Trial Court at the first instance.

[24] Reasonable grounds are not available for believing that the accused is not guilty of the offences that he has been charged with. Thus, the narrow parameters of the bail available under Section 37 of the Act, have not been satisfied in the instant case. In view of the aforesaid discussion, I am not inclined to enlarge the Applicant on bail.

[25] The Application is dismissed

2026(1)MCrJ80

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Jitendra Jain)

Insolvency Petition No 1 of 2025 **dated 20/11/2025**

Mehul Jagdish Trivedi

Versus

Manisha Mehul Trivedi

INSOLVENCY DECLARATION

Code of Criminal Procedure, 1973 Sec. 125 - Presidency Towns Insolvency Act, 1909 Sec. 14 - Insolvency Act, 1955 Sec. 14, Sec. 9, Sec. 10, Sec. 45, Sec. 18, Sec. 25 - Insolvency Declaration - Petitioner sought declaration of insolvency citing inability to pay maintenance ordered under Section 125 CrPC - Contended debts exceeded statutory limit - Court observed insolvency cannot absolve personal liability to pay maintenance - Maintenance order not a debt dischargeable under insolvency laws - Provisions of Insolvency Act provide eligibility to file petition but not automatic declaration - Petitioner failed to satisfy jurisdictional condition and relief claimed beyond legislative intent - Petition Dismissed

Law Point: Insolvency laws do not extinguish statutory obligation to pay maintenance under criminal or family law orders and such liability cannot be treated as dischargeable debt

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 125

Presidency Towns Insolvency Act, 1909 Sec. 14

Insolvency Act, 1955 Sec. 14, Sec. 9, Sec. 10, Sec. 45, Sec. 18, Sec. 25

Counsel:

Siddh Pamecha, Kuber Wagle, Rekha Rane

JUDGEMENT

Jitendra Jain, J.- [1] This petition is filed under Section 14 of the Presidency-Towns Insolvency Act, 1909 (Insolvency Act) by the petitioner seeking a declaration that the petitioner be declared as an insolvent under the provisions of the said Act and further seeks stay of the execution proceedings in respect of an order dated 17th May, 2021 passed by the Family Court, Mumbai, whereby the petitioner was directed to pay maintenance of Rs.25,000/- per month under Section 125 of the Code of Criminal Procedure (Cr.P.C.).

Brief Facts:-

[2] The petitioner-husband is a dance teacher staying in suburb of Mumbai and the respondent-wife is staying in South Mumbai.

[3] On 28th January, 2014 petitioner-husband and respondent-wife tied marital knot. Within 2 months of marriage, there were differences resulting into dispute reaching the Family Court pursuant to proceedings filed by the respondent-wife.

[4] On 17th May, 2021, the Family Court passed an order under Section 125 of the Code of Criminal Procedure ordering the petitioner-husband to pay Rs.25,000/- p.m. towards maintenance to respondent-wife w.e.f. 15th June, 2015. The said order has been challenged by the petitioner-husband by filing separate proceedings namely, Criminal Revision Petition, before the High Court which is pending as of today. The Family Court has rejected the contention of the petitioner-husband that his earnings are Rs.15,000/- p.m. only.

[5] In the above backdrop, the present petition is filed for the reliefs stated above.

[6] The ground on the basis of which the petition has been filed is that the petitioner is earning Rs.12,000/- to Rs.15,000/- per month, whereas the arrears amount calculated to be paid as per the Family Court's order is Rs.22,30,000/- and since he has no means to pay the said amount, he be declared as an insolvent.

[7] The learned counsel for the petitioner in support of his aforesaid plea, relied upon Section 14(1)(a) read with Section 9(1)(f) of the Insolvency Act and contended that since the debts are more than Rs.500/-, the petitioner be declared as an insolvent and also took support of Explanation to Section 10 of the said Act. The learned

counsel for the petitioner also relied on the observation made in the order dated 15th July, 2025 in the present matter, which was passed at the behest of the objector for vacating the ad-interim order.

[8] The learned counsel for the petitioner has not made any further submissions or brought to the attention of the Court any judgments on the issue which is raised for consideration of the Court either in favour of the petitioner or against the petitioner.

Analysis and Conclusion:

[9] The short point which requires adjudication in the present petition is whether the petitioner can be declared as an "insolvent" under the Presidency Towns Insolvency Act, 1909 since according to him he is unable to pay the amount ordered by the Family Court.

[10] Relevant provisions of the Presidency Towns Insolvency Act, 1909 are as under:-

Section 2 - Definitions-

(b) "debt" includes a judgment-debt, and "debtor" includes a judgment-debtor.

Section 9 - Acts of insolvency-

(1) A debtor commits an act of insolvency in each of the following cases, namely,-
(f) if he petitions to be adjudged an insolvent;

Section 10 - Power to adjudicate-

Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Explanation- The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Section 11 - Restrictions on jurisdiction-

The Court shall not have jurisdiction to make an order of adjudication, unless-

(a) the debtor is at the time of the presentation of the insolvency petition, imprisoned in execution of the decree of a Court for the payment of money in any prison to which debtors are ordinarily committed by the Court in the exercise of its ordinary jurisdiction.

Section 14 - Conditions on which debtor may petition-

(1) A debtor shall not be entitled to present an insolvency petition unless -

(a) his debts amounts to five hundred rupees.

Section 45 - Effect of order of discharge-

(1) An order of discharge shall not release the insolvent from-

(d) any liability under an order for maintenance under section 488 of the Code of Criminal Procedure, 1898.

[11] Section 14(1)(a) of the Insolvency Act provides for conditions on the basis of which debtor may petition and it provides that a debtor shall not be entitled to present an insolvency petition unless his debts amount to Rs.500/-. In my view, Section 14(1)(a) of the Insolvency Act only lays down the qualifying amount for presenting or filing the insolvency petition by a debtor. Merely because the debts are more than Rs.500/-, it does not mean that automatically on a petition being filed, the Court has no option, but to declare the petitioner as an insolvent. Section 14(1)(a) read with Section 9(1)(f) only entitles a person to present an insolvency petition by treating the same as an act of insolvency but that would entitle the debtor to contend that order of adjudicating him as an insolvent is to follow as a right. This provision is only for the purpose of defining eligibility to file the petition and not for an automatic order by the Court to be declared as an insolvent.

[12] Section 11(a) provides that the Court shall not have jurisdiction to make an order of adjudication unless the debtor is imprisoned in execution of the decree of a Court for payment of money in any prison **at the time of the prosecution of the insolvency petition**. In the instant case, it is not the case of the petitioner that at the time of the presentation of the present petition he was imprisoned though he may have been arrested/imprisoned prior to the date of filing the present petition. Therefore, even on this count, this Court would not have jurisdiction to make an order of adjudication.

[13] Section 10 of the Insolvency Act provides/empowers the Court to make an order of adjudging the petitioner as an insolvent. The Explanation to Section 10 provides that the presentation of a petition by the debtor shall be deemed to be an act of insolvency within the meaning of the section and on such petition the Court may make an order of adjudication. Firstly, the phrase used in the Explanation is that the Court "may" make an order. Wherever the legislature in the Insolvency Act wanted to make a provision mandatory, they have used the word "shall". Therefore, a conscious departure has been made in the said Explanation by using the word "may". It is at the discretion of the Court whether to make an order of adjudication or not. If the legislature wished not want to give such a discretion to the Court, the provision would have been worded to state that once a petition is filed by a debtor whose debts are more than Rs.500/-, then the Court shall make an order of adjudication. Therefore, to say that merely because a petition is filed by a debtor, the Court has no other option, but to make an order of adjudication on deeming the presentation of a petition as an act of insolvency would be to read the Explanation as mandatory. In my view, on a reading of Section 10 and the Explanation, the power to adjudicate a person as an insolvent cannot be read to be mandatory and the Court has the discretion in the peculiar facts of a particular case to refuse a person from being declared as an insolvent. Therefore, the contention raised by the learned counsel for the petitioner by placing reliance on Section 10 and thereby submitting that, since the petition has been filed, there is no other option but to declare the petitioner as an insolvent, cannot be accepted.

[14] Assuming the powers of the Court to adjudicate the petitioner as insolvent is treated as mandatory on filing the petition and the word "may" is read as "shall", still the Court in the facts of the present case would restrain itself in passing the order of adjudication of the petitioner as insolvent. The Insolvency Act cannot be abused to seek stay of the Family Court order granting maintenance when the petitioner himself has challenged that order in Criminal Revision Petition. Any relief granted in this petition would amount to this Court adjudicating the said Revision Petition which is not permissible. The object of the Insolvency Act is not to encourage this course of action. Therefore, even on this count, this Court cannot grant any relief sought for by the petitioner. This Court cannot be used as a tool to do indirectly what is not permissible directly.

[15] Section 10 begins with "subject to the conditions specified in this Act" and Section 11(a) does not empower the Court to pass an order of adjudication if the debtor is not imprisoned at the time of presentation of insolvency petition. Therefore, on a conjoint reading, this Court cannot pass an order of adjudication merely on the basis of filing of the petition which is treated as an act of insolvency.

[16] The learned counsel for the petitioner has also relied upon Section 9(1)(f) of the Insolvency Act which states that a debtor commits an act of insolvency if he petitions to be adjudged as an insolvent. In my view, the reliance placed on this provision is misplaced. The basis of the present petition is that the petitioner is unable to make the payment to his wife as per the order of the Family Court dated 17th May, 2021. As per the Family Court's order, the petitioner is a debtor and the wife of the petitioner is a creditor. Section 9(2) of the Insolvency Act provides that, a debtor commits an act of insolvency if a creditor who has obtained a decree or order against him for the payment of money has served on the debtor a notice as provided in sub-section (3), and the debtor does not comply with that notice within the period specified therein, then in such a scenario, unless the insolvency notice is set aside on an application made by the debtor, he will be treated as an insolvent.

[17] The insolvency notice, as per sub-section (3) of Section 9 of the Insolvency Act, shall be in the prescribed form and served in the prescribed manner specifying the amount due under the decree or order and should also specify compliance within certain period specified therein, and shall state the consequences of non-compliance.

[18] In the instant case, the creditor-wife has not issued a notice under Section 9(2). The facts of the present case and on the basis of which, the present petition is filed is an amount to be paid under an order of the Family Court dated 17th May, 2021. Since, under the Insolvency Act, there is a specific provision under Section 9(2) for dealing with insolvency proceedings on the basis of a decree or order for payment of money, the petitioner cannot take shelter of Section 9(1)(f) of the Insolvency Act, and cannot bypass the provisions of sub-section (2) of Section 9 for declaring himself as an insolvent.

[19] Section 9(1)(f) is a general section, whereas Section 9(2) is a specific and special provision and it is a settled position that a special provision has to prevail over

the general provision. The contention of the petitioner to declare himself as an insolvent by placing reliance on Section 9(1)(f) when the facts and the basis of the petition fall under Section 9(2), cannot be entertained.

[20] It is a settled position that what cannot be done directly cannot be done indirectly. By this petition, the petitioner is attempting to frustrate the order of the Family Court dated 17th May, 2021, by seeking a declaration of insolvency. It is also important to note that the order of the Family Court is dated 17th May, 2021 and according to the petitioner, his income is around Rs.15,000/- all throughout, still the petition was lodged in May 2023, after a period of two years to frustrate the order of payment made by the Family Court. The petitioner cannot adopt a modus operandi by taking recourse to the Insolvency Act to modify or frustrate the order passed by the Family Court. The petitioner has adopted separate proceedings for challenging the Family Court order and by adopting the present proceedings, he is attempting to stall these proceedings whereby the Family Court's order is again sought to be challenged. In my view, on the basis of the analysis made by me above, such a course of action cannot be adopted and the Court cannot exercise its discretion under Section 10 for declaring the petitioner, in the facts of the present case, as an insolvent.

[21] Effect of order of adjudication is that under Sections 18 and 25 of the Insolvency Act, proceedings against an insolvent in any Court would not only be stayed but an order for protection from arrest or detention may also be passed. In the instant case, the petition is based on the Family Court's order dated 17th May, 2021 and by this petition an attempt is made to stall the Family Court proceedings and avoid any arrest for non-compliance of any order. It cannot be overlooked that the order of Family Court has been challenged in the Criminal Revision proceedings before this Court and, therefore, allowing the present petition would be permitting the petitioner to adopt two parallel proceedings after electing one. Therefore, in my view, such an attempt cannot be achieved by taking recourse to proceedings under the Insolvency Act for declaration of the petitioner as an insolvent.

[22] If the contention of the petitioner is that, irrespective of him being declared as an insolvent, the liability under the Family Court's order would continue and the proceedings under the Family Court's Act can be taken independently, then in that scenario I fail to understand why the present petition is filed only on the basis that he is unable to discharge the liability under the Family Court's order. This is contradiction in itself. It is the contention of the petitioner that the persons from whom he has taken loan are not seeking recovery and further the recovery under the Family Court order is saved by virtue of Section 45 of the Insolvency Act, then, I fail to understand where is the apprehension of him for non-payment of any debt to declare him as an insolvent.

[23] The reliance placed by the learned counsel for the petitioner on the order dated 15th July, 2025 to contend that an act of filing a petition is an act of insolvency and, therefore, this Court cannot adjudicate upon the maintainability, is misconceived. The said order merely reproduces what is stated in Sections 10 and 14 of the Insolvency Act

and directed the Insolvency Registrar to determine whether any of the requirements of Section 14 are satisfied for being adjudicated as an insolvent. Therefore, by this order, there is no adjudication of the petitioner being declared as an insolvent. This order was only for modification of ad-interim order sought for by the objector.

[24] It is important to note that in the preliminary examination report dated 01st October, 2025, the petitioner has submitted that he has taken loans prior to and post the order of the Family Court dated 17th May, 2021 and further he has stated that two of such creditors, namely, R. V. Gorgi and Co. and Priya Padlekar have not issued any letter for recovery with respect of the said loan. However, there is no such averments with respect to the loan from Jagdish Trivedi and Ashwin Kacha. If the petitioner's contention that he is earning only Rs.15,000/- and, therefore, is not able to make the payment under the Family Court order is accepted, then I fail to understand that even during the period when he had taken the loan, his income was Rs.15,000/-, which on his own saying, would result in his incapacity to make repayment of loans, then in that case, why he did not make an application for being declared as insolvent in 2019 and 2023. It is also unbelievable that the persons from whom he has taken a loan would not ask for repayment, nor has any statement of such lenders been furnished waiving the loan.

[25] The only basis canvassed before me by the learned counsel for the petitioner for declaring the petitioner as insolvent is on the basis of Section 14(1)(a) read with Section 10 read with Section 9(1)(f) of the Insolvency Act and the Family Court's order dated 17th May, 2021.

[26] The issue whether the order/decreed of a Civil Court passed against the husband for maintenance of his wife is a "debt" or not came up for consideration in the case of **Hemavathiamma vs. Kumaravela Mudalia**, 1968 AIR(Mys) 111 before the Mysore High Court. The said decision after analyzing the meaning of the word "debt" came to a conclusion that amount payable for the maintenance of wife cannot be termed as a debt but it is a moral duty and, therefore, an order of declaring the respondent therein as an insolvent cannot be passed under the Provincial Insolvency Act. The provisions of the Presidency Towns Insolvency Act, 1909 is *pari materia* to the Provincial Insolvency Act and, therefore, in my view, this decision squarely applies to the facts of the present case. Since the amount payable under the order of the Family Court cannot be a "debt", the present petition on the basis of Section 14(1)(a) cannot be said to be maintainable. I may clarify that before me, the petitioner has not rested his case on any other provision except Section 14(1)(a). Relevant paragraphs of the Mysore High Court reads as under:-

12. The ratio decidendi of the decisions of the Courts in England and U. S. A. holding that alimony is not provable in bankruptcy is, that the award of alimony or maintenance does not arise from any contract express or implied, but from the relation of marriage and that the alimony or maintenance is awarded not in payment of a debt but in performance of a general duty of the husband to support his wife, made specific and measured by decree of court. In the words of Justice Day, who delivered the

opinion of the Supreme Court of U. S. A. in *Wetmore v. Markoe*, 1904 49 LawEd 390 the principle is stated thus:

".....the doctrine that a decree awarding alimony to the wife or children or both, is not a debt which has been put in the form of a Judgment, but is rather a legal means of enforcing the obligation of the husband and father to support and maintain his children. He owes this duty, not because of any contractual obligation, or as a debt due from him to the wife, but because of the policy of the law which imposes the obligation upon the husband. The law interferes when the husband neglects or refuses to discharge this duty, and enforce it against him by means of legal proceedings". Under the Hindu Law, which governs the parties in the instant case, a Hindu is under a legal obligation to maintain his wife, his minor sons, his unmarried daughters and his aged parents, whether he possesses any property or not. The obligation to maintain these relations is personal in character and arises from the very existence of relationship of the parties. When a Hindu refuses or neglects his legal duty, the court enforces that duty by making a decree in favour of the wife or children. When the court awards maintenance to the wife against her husband, it does not enforce the payment of any debt. Unless insolvency releases a man altogether from the obligation to support his wife and children, the husband cannot obtain discharge of his liability under a decree for maintenance by recourse to insolvency. The object of insolvency law is not to deprive the wife and children of the support and maintenance due from the husband and father which it has ever been the purpose of the law to enforce. Systems of bankruptcy or insolvency have been designed with the object of relieving the honest debtor from the weight of indebtedness which has become oppressive and to permit him to have a fresh start in business or commercial life freed from the obligation and responsibilities which may have resulted by his misfortunes. Unless expressly required by statutory enactment, the court should not presume the intention on the part of the Legislature in providing a law for giving relief to unfortunate debtors, to make the law a means of avoiding enforcement of obligation moral and legal devolved upon the husband to support his wife and to maintain and educate his children.

13. If liability under a decree for maintenance against the husband is held to be a debt provable in insolvency, on his discharge, the husband would be released from all obligation to support his wife. Under S. 28 of the Act, the entire salary or personal earnings of an insolvent after an adjudication, does not vest in the Receiver, but only so much of the salary or personal earnings as are not exempt from attachment under Section 60 of the Code of Civil Procedure. Salary to the extent of first Rs. 200 and one half of the remainder is exempt from attachment under Section 60(1)(i) of the Code. Now, take the instance of an insolvent earning a salary of Rs. 200. His salary will be entirely his and not a paisa out of it will vest in the Receiver for distribution among his creditors. Now, if the obligation to maintain the wife and children is held to be a provable debt against the estate of the insolvent, the wife and children cannot claim any portion of the salary for their maintenance.

14. The reason given by the High Court of Madras in the decisions cited above for distinguishing the ratio of the English cases, was that a decree or order for maintenance in India unlike an order for alimony in England is unalterable and therefore, it is a debt provable in insolvency. Similar contention was urged in (1904) 49 Law Ed 390 before the U. S. A. Supreme Court. It was a case where the liability for maintenance had become fixed by an unalterable decree. It was held that the ground of distinction urged did not change the nature of the obligation on which the judgment is founded. This is what Mr. Justice Day in repelling the contention stated:

"While it is true in this case the obligation has become fixed by an unalterable decree so far as the amount to be contributed by the husband for the support is concerned, looking beneath the judgment for the foundation upon which it rests, we find it was not decreed for any debt of the bankrupt, but was only a means designed by the law for carrying into effect, and making available to the wife and children, the right which the law gives them as against the husband and father".

In my opinion, the reasoning of the decision in (1904) 49 Law Ed. 390 is equally applicable to cases arising under Indian Insolvency Acts. In my opinion, if the obligation of the husband, in the absence of a judgment or order does not constitute a debt owed by the husband to his wife, it does not, become a debt when the very same obligation is enforced by decree of court and therefore, what the court has to ascertain is whether the obligation to support one's wife and minor children is a "debt" for the purposes of the Act. What is not a debt does not become a debt when the same obligation is enforced by decree or order of court. In my judgment, the decree as the one here under consideration is not a 'debt' within the meaning of the Act and it cannot form the basis of adjudication of the husband, an insolvent.

[27] It is also important to note that 17th May, 2021 order of the Family Court has been challenged by the petitioner and, therefore, the sum directed to be paid may undergo a change. Even on this count "debt", assuming it is, has not crystallized and reached finality. The above decision of the Mysore High Court was found in the file because it was tendered on previous occasions. No attempt was made by the learned counsel for the petitioner to make any submissions on this decision or to distinguish the same.

[28] Section 45 of the Insolvency Act would also not be applicable to the facts of the present case. Firstly, Section 45 deals with the effect of an order of discharge, whereas the present proceedings concern whether to adjudicate the petitioner as an insolvent. Secondly, Section 45(1)(d) provides that an order of discharge shall not release the insolvent from any liability under an order for maintenance under Section 488 of the Code of Criminal Procedure, 1898. Section 45(1)(d) does not deal with the Code of Criminal Procedure, 1973, though Section 488 of the old law is *pari materia* to Section 125 of the new law. Reading of Section 488 of the Code of Criminal Procedure, 1898 to mean Section 125 of the Code of Criminal Procedure, 1973 would be rewriting the law. Therefore, Section 45 cannot support the case of the petitioner. In

any case, the legislature should consider amending Section 45(1)(d) to bring in line with the new law.

[29] On a reading of prayer clause (b), seeking a stay of the Family Court order, the petitioner, under the guise of insolvency proceedings would undermine the very purpose of the order passed by the Family Court and would embolden the debtor to escape liability through insolvency proceedings. Petitioner seeks to take the shield of "insolvency" to protect himself from the sword of the Family Court order.

[30] Before parting, I may observe that the present case clearly illustrates the prolonged course of litigation between the parties and which requires reconciliation as reflected in the following:-

- 2 months of marriage union;
- 120 months of litigation for division;
- With no end in sight;
- In proving who is right;
- Would it not be better to amicably resolve the dispute;
- Rather than trying to gain;
- Save the balance period from mental pain.

[31] For all the above reasons, the present petition is dismissed. No order as to cost

2026(1)McrJ89

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

(Hon'ble Judge: Anil L Pansare; Raj D Wakode)

Criminal Writ Petition No 321 of 2025, 664 of 2025, 660 of 2024, 315 of 2025, 424 of 2025, 665 of 2025, 799 of 2025 **dated 20/11/2025**

Kartik Yogeshwar Chatur; Dilip Gopaldas Duwani; Dinshaws Dairy Foods Private Limited; Surendra Ramrao Geed; Rajani Suresh Mangalani; Dev Dilip Duwani; Gaurav Rajesh Mehta

Versus

Union of India & Ors

DEBIT FREEZE OF ACCOUNTS

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 102, Sec. 107, Sec. 106 - Debit Freeze of Accounts - Petitioners challenged debit freezing of bank accounts by police under Section 106 of BNSS - Freezing done on ground that fraud money credited to their accounts - Court referred to Kerala High Court ruling affirmed by Supreme Court that Section 106 permits seizure only for evidence purpose, not attachment or freezing -

Attachment of proceeds of crime possible only under Section 107 through Magistrate's order - Police action beyond jurisdiction - Orders quashed - Petitioners permitted to claim compensation for unlawful freezing - Petitions Allowed

Law Point: Under Section 106 BNSS, police have no authority to attach or debit freeze bank accounts; only seizure for investigation is permitted, attachment of proceeds of crime requires order under Section 107 by Magistrate

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 102, Sec. 107, Sec. 106

Counsel:

Mahendra Limaye, S A Chaudhari, M Lalsare, S G Karmarkar, R S Suryawanshi, P G Mewar, V A Patait, A Sambaray, K N Lad, K A Gowardipe

JUDGEMENT

[1] The common question that requires answer in these petitions is, whether an Investigating Agency has power to debit freeze an account under Section 106 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) ?

[2] There is no dispute that in all these petitions, the accounts of the petitioners have been debit freeze under Section 106 of the BNSS. The reason why the accounts are debit freeze is that there occurred some cyber fraud, and that, part of amount of the alleged fraud has been credited to the accounts of the respective petitioners.

[3] We have, accordingly, heard the Counsels for both sides, and have gone through the record to find that in some cases, the Investigating Agency has issued a communication to the Bank to debit freeze the accounts of the respective petitioners, however, in many cases, even such communication is not issued to the Bank, at least, the communication is not placed before us by the concerned Bank. It is, thus, a mystery as to how the Bank chose to debit freeze the accounts of their own.

[4] We, accordingly, permit respective petitioners to seek compensation, if so desired, for such an action, by filing appropriate proceedings. If such proceedings are filed, the Court shall decide the same on its own merit. We may mention here that in some cases, the amount has been transferred in terms of the Magistrate's order, which cannot be faulted.

[5] So far as Section 106 of the BNSS is concerned, the law is well settled. The High Court of Kerala in the case of Headstar Global Pvt. Limited Vs. State of Kerala & Ors. [CRL. MC NO. 3740/2025 decided on 2/6/2025], while dealing with debit freezing of account in an identical situation, took note of a judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Tapas D. Neogy**, 1999 7 SCC 685, wherein, the Supreme Court held that such powers are available to the Investigating Agency under Section 102 of the Code of Criminal Procedure, 1973 (for short "the Code"), which is now replaced by the provisions of the BNSS.

[6] The Kerala High Court then referred to Section 102 of the Code to opine that the provision empowers a Police Officer to seize a property, which is either a stolen property or found under circumstances, which created suspicion of commission of any offence. Conversely, the Court held that no police officer can seize any property, which is neither stolen nor found under circumstances, which created suspicion of commission of any offence.

[7] The Kerala High Court then referred to two other judgments of the Supreme Court; one in the case of **M.T. Enrica Lexie And Another Vs. Doramma And Others**, 2012 6 SCC 760, and another in the case of **Shento Varghese Vs. Julfikar Husen And Others**, 2024 7 SCC 23, wherein, the Supreme Court explained the scope under Section 102 of the Code. Thereafter, the Kerala High Court observed in paragraph 10 as under:

"10. It is pertinent to note that all the above decisions were rendered with respect to Section 102 of the Code of Criminal Procedure and the Code did not contain any provision for seizure or attachment of the proceeds of crime, except under Chapter VII-A dealing with reciprocal arrangements with other countries for assistance in attachment and forfeiture of property in a contracting state. This lacuna is cured by retaining Section 102 of the Criminal Procedure Code as Section 106 and including Section 107 in the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short)."

[8] Thus, the Kerala High Court, taking note of the subsequent judgments of the Supreme Court, held that the Code did not contain any provision for seizure or attachment of the proceeds of crime, except under Chapter VII-A dealing with reciprocal arrangements with other countries. The Court then took note of the lacuna that occurred in Section 102 of the Code, and observed that the same has been cured by keeping Section 106 in BNSS, which is akin Section 102 of the Code, and by adding Section 107 in BNSS.

[9] Taking cognizance of these provisions, the Kerala High Court held thus:

"12. Going by Section 107 of BNSS, a police officer investigating a crime has to approach the jurisdictional Magistrate seeking attachment of any property believed to be derived directly or indirectly from criminal activity or the commission of an offence. The Magistrate may thereupon order attachment after hearing all parties concerned or issue an interim order for attachment, if issuing notice to the owner will defeat the purpose of attachment and seizure. After confirming that the attached property is the proceeds of crime, the Magistrate can direct the District Magistrate to distribute the property among those affected by the crime. Thus Section 107 confers the jurisdictional Magistrates with explicit authority to act swiftly in cases involving proceeds of crime.

13. Another aspect of importance is that, while Section 106 speaks of seizure, Section 107 deals with attachment, forfeiture and restoration. Seizure under Section 106 can be carried out by a police officer and an ex post facto report submitted to the Magistrate. On the other hand, attachment under Section 107 can be effected only upon

the orders of the Magistrate. The logic behind this distinction being that the purpose of seizure is more to secure the evidence during an investigation, whereas attachment is intended to secure the proceeds of crime by preventing its disposal and thus ensuring its availability for legal procedure such as forfeiture and distribution to the victim/s."

[10] Thus, the Kerala High Court, in clear terms, held that a police officer investigating a crime has to approach jurisdictional Magistrate under Section 107 of the BNSS to seek attachment of any property believed to be derived directly or indirectly from a criminal activity or commission of an offence. Subsequent course will have to be adopted in terms of order passed by the Magistrate. The Court further clarified that while Section 106 speaks of seizure, Section 107 deals with attachment, forfeiture and restoration. Seizure under Section 106 can be carried out by a police officer, and ex post facto report submitted to the Magistrate. On the other hand, attachment under Section 107 can be effected only upon order of the Magistrate. The logic behind this distinction being that the purpose of seizure is more to secure evidence during investigation, whereas, attachment is intended to secure proceeds of crime by preventing its disposal and, thus, ensuring its availability for legal procedure such as forfeiture and distribution to the victim/s.

[11] Thus, the judgment makes it clear that debit freezing account is not permissible under Section 106 of the BNSS.

[12] The judgment of Kerala High Court was challenged before the Supreme Court in SLP being SLP (Cri.) No. 13433/2025, where the Supreme Court declined to interfere with the said judgment.

[13] That being so, the law stands well settled that under Section 106 of the BNSS, an Investigating Agency has no power to attach or debit freeze an account.

[14] In that view of the matter, the orders, which are passed by the Investigating Agency in respective petitions under Section 106 of the BNSS are liable to be quashed and set aside.

[15] We may note here that there is, in place system to deal with the financial fraud, which is titled as 'Citizen Financial Cyber Frauds Reporting and Management System'. This system has been published by the Indian Cybercrime Coordination Centre, which comes under the Ministry of Home Affairs, Government of India. Our attention is invited to FAQs, particularly, FAQ No.21. The said question and answer would throw further light as to how Banks should deal with reports/ communications received from an Investigating Agency. FAQ No. 21 and its answer reads as under:

"21. Whether the Bank can block/withhold the funds on the basis of the complaint's acknowledgement number that gets reported on the helpline number or NCRP ?

Yes, Bank/intermediaries can put the disputed amount on lien on the basis of the complaint's acknowledgement number so that amount can be refunded later, after investigation of the complaint by concerned State/Uts LEAs."

[16] As could be seen, Bank/intermediaries can put the disputed amount on lien, but cannot debit freeze the account.

[17] Despite such status, some Banks upon receiving certain communications from Investigating Agency, which does not even call for debit freezing accounts, are proceeding to debit freeze the accounts of the account holders resulting into losses to their day-today affairs.

[18] Put all together, it is abundantly clear that an Investigating Agency has no power of attachment/debit freezing a Bank Account under Section 106 of the BNSS.

[19] The Investigating Agency may, however, proceed in terms of Section 107 of the BNSS to debit freeze or attach a Bank Account.

[20] So far as Banks are concerned, they should act in terms of the Management System, mentioned above, unless there is an specific order of debit freezing an account by a competent authority.

[21] With the aforesaid observation, we allow the petitions partly. The orders passed under Section 106 of the BNSS in respective petitions debit freezing the accounts of the petitioners stand quashed and set aside.

[22] The petitions are disposed of in terms of above

2026(1)McrJ93

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

(Hon'ble Judge: M M Nerlikar; Piyush Mahajan)

Criminal Appeal No 320 of 2017 **dated 18/11/2025**

Prashant S/o Himmatrao Jawarkar

Versus

Dr Ganesh S/o Pandurang Vasu

COMPENSATION ORDER

Code of Criminal Procedure, 1973 Sec. 250 - Negotiable Instruments Act, 1881 Sec. 138 - Compensation Order - Appellant challenged direction of Magistrate granting compensation to accused under Section 250 Cr.P.C. after acquittal in cheque dishonour case - Magistrate held complainant initiated proceedings without reasonable ground - Appellant contended mere failure to prove case does not attract Section 250 - Court observed Section 250 applies only when complaint found false or made without reasonable cause and requires recording of reasons - Acquittal for want of proof not equivalent to baseless accusation - Court found Trial Court erred in equating failure of evidence with frivolous prosecution - Order imposing compensation set aside - Appeal Allowed

Law Point: Compensation under Section 250 Cr.P.C. can be awarded only when complaint is found to be false or malicious and not merely because prosecution fails to prove its case under Section 138 of Negotiable Instruments Act.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 250

Negotiable Instruments Act, 1881 Sec. 138

Counsel:

N B Jawade

JUDGEMENT

[1] Heard the learned counsel for the appellant.

[2] **Admit.**

[3] The present appeal challenges the judgment and order dated 16/03/2017 passed by the learned Judicial Magistrate, First Class, Court No.5, Akola, wherein, the accused was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, however, the appellant was directed to pay compensation of Rs.25,000/- to the accused under Section 250(2) of the Code of Criminal Procedure, 1973, and in default of payment of compensation amount the appellant was directed to undergo simple imprisonment for 15 days under Section 250(3) of the Code of Criminal Procedure.

[4] This Court by an order dated 07/07/2017, rejected the application seeking leave to file appeal to the extent of acquittal of the non-applicant/accused. However, the application was allowed only to the extent of challenging the order giving a direction to the applicant/complainant to give compensation to the non-applicant/ accused. Accordingly, appeal was admitted only to the extent of granting compensation to the present non-applicant/accused. It further appears that ad-interim relief was granted in favour of the appellant by the same order, i.e., order dated 07/07/2017.

[5] I have heard the learned counsel for the appellant, however, none appears for the respondent.

[6] The learned counsel for the appellant submits that the Judicial Magistrate First Class, Akola, erred in granting compensation as mere failure to prove the case by itself is not sufficient to direct payment of compensation under Section 250 of the Cr.P.C. He further submits that the signature on the cheque was not disputed by the respondent. The cheque bearing No.232800 was issued by the respondent and when it was presented it was dishonored. Thereafter, a return memo of State Bank of India was also placed on record, not only that, copy of demand notice, postal acknowledgment, postal receipt, reply of accused and receipts were placed on record in order to prove the case, however, if the complainant failed to prove the case that by itself does not give rise to grant of compensation by the complainant. He further submits that the return memo was placed on record of drawee bank, i.e., State Bank of India, however,

he submits that the explanation was given by the complainant by stating that cheque at Exh.20 was forwarded by the Nishant Pat Sanstha to their authorized Bank, i.e., Peoples Co-operative Bank Ltd. The Peoples Co-operative Bank is linked with Nishant Pat Sanstha. Moreover, the date mentioned on the return memo, i.e., Exh.21 of the Drawee bank of SBI is written in Marathi as 24/03/2023, and accordingly, submits that what endorsement has been put at the back side of the cheque is not in the hands of the complainant and submits that the complainant has duly proved that the cheque has been signed by the respondent herein. He further submits that to invoke provisions of Section 250 of Cr.P.C., the Court has to see whether there are reasonable ground for making the accusation against the accused or not. However, it cannot be equated with the acquittal on the ground of not proving the case by the complainant / informant. Accordingly, he submits that the Trial Court has wrongly invoked Section 250 of the Cr.P.C. and failed to apply Section 250 in its true perspective. He further submits that the Trial Court has erred in directing grant of compensation by the appellant to the respondent and ultimately prayed to allow the Appeal.

[7] Though on behalf of respondent, Mr. Deshpande, put in his appearance, but during the course of hearing he remained absent. The matter pertains to the year 2017. The original proceedings are of 2013, and therefore, I though it fit to proceed with the matter in the absence of learned counsel for the respondent.

[8] After going through the record and proceedings and after hearing the learned counsel for the appellant, it could be gathered from the record that the grounds on which the compensation was awarded to the respondent, which is to be paid by the complainant under Section 250 of Cr.P.C. are that "no ground appears to conclude that the complainant's case has some truth in his case, except to collect money from the accused.", "complainant has initiated the proceeding without any reasonable ground as there was absence of return memo, the endorsement dtd. 23/03/2013 of a stranger bank on the back side of the cheque, created doubt.", and "by initiating such proceeding without having justified documents, the accused has abused the process of court. He has not only consumed the long period of the Trial Court, but also of the Hon'ble Sessions & High Court." Therefore, the Trial Court accordingly granted Rs.25,000/- as compensation to the accused.

[9] It is necessary to reproduce Section 250 of Cr.P.C. which reads thus:-

"250. Compensation for accusation without reasonable cause.

1. If, in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith,

to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

2. The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

3. The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

4. When any person is imprisoned under subsection (3), the provisions of Sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

5. No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

6. A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

7. When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

8. The provisions of this section apply to summons-cases as well as to warrant-cases."

So as to interpret the aforesaid provision, it would be useful to refer to the judgment delivered by the Supreme Court in the case of **State of Rajasthan VS Jainudeen Shekh and Another**, 2016 1 SCC 514. Paragraph Nos. 8 to 14 are reproduced below:-

"8. Section 250 of the Code confers powers on the Magistrate to grant compensation on certain conditions being satisfied. A procedure has been engrafted in the said provision. There are certain cases in which the learned Sessions Judge can

grant compensation. In this context we may refer with profit to the decision in Daulat Ram v. State of Haryana¹. The appellant therein was convicted by the learned Additional Sessions Judge under Section 25 of the Arms Act, 1959 read with Section 6(1) of the Terrorist & Disruptive Activities (Prevention) Act, 1985 (for short, 'TADA'). The defence taken by the accused was that he had been falsely implicated at the instance of one Hans Raj Lambardar of the village. He had examined four witnesses in his defence. He was acquitted under Section 6 of the TADA but convicted under Section 25 of the Arms Act. The Court analyzing the evidence on record and taking note of the plea of the defence, dislodged the judgment of conviction and while doing so, this Court opined that:-

"....It is unfortunate that the police officers, namely, Head Constable, Randhir PW 2 and the then Head Constable Jai Dayal, PW 3 foisted a false case on the appellant for reasons best known to them, which is a very serious matter. We are informed that the appellant was in custody for a few days in connection with this case. We, therefore, direct the respondent State to pay a sum of Rs. 5000 as compensation to the appellant within two months. The respondent-State may however recover the said amount from the police officials, Randhir PW 2 and Jai Dayal, PW 3 (Rs. 2500 each), who are responsible for false implication of the appellant."

9. In Mohd. Zahid v. Govt. of NCT of Delhi², the appellant had preferred an appeal under Section 19 of the TADA. The designated court had found him guilty and convicted him for the offence under Section 5 of TADA and sentenced him to suffer rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and, in default of payment of fine, to undergo rigorous imprisonment for two months more. The Court allowed the appeal and recorded an order of acquittal. In course of analysis, the Court has opined that certain documents had been interpolated, the evidence of certain witnesses was absolutely false and that the appellant therein made a victim of prolonged illegal incarceration due to machination of PWs 5 and 6 and other police personnel and accordingly directed payment of Rs.50,000/- as compensation.

10. In this context reference to certain other decisions would be appropriate. In State, represented by Inspector of Police and others v. N.M.T. Joy Immaculate³, a three-Judge Bench was dealing with the judgment and order passed by the learned Single Judge of the High Court of Madras in a Criminal Revision which was allowed and revision was disposed of with certain directions. The High Court had granted Rs.1 lakh compensation on the basis of an affidavit. G.P. Mathur, J., speaking for the learned Chief Justice and himself, after quashing the order of the High Court has opined that:-

" The High Court has also awarded Rs. 1 lakh as compensation to the accused on the ground that she was illegally detained in the police station and the police personnel committed acts of molestation, obscene violation, etc. It is noteworthy that after investigation, the police has submitted charge-sheet against accused Joy Immaculate. Her application for bail was rejected by the learned Sessions Judge and thereafter by the High Court on 18-1-2002 prior to the decision of the revision. There is absolutely

no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has commenced. This direction, therefore, deserves to be set aside."

Dr. A.R. Lakshmann, J. in his concurring opinion has laid down:-

"Above all, the learned Judge has committed a grave error in awarding a compensation of Rs 1 lakh on the ground that the police personnel committed acts of obscene violation, teasing the respondent herein. The learned Judge has relied upon only on the basis of the affidavit filed in the case for coming to the conclusion and also on the basis of the assumption that the respondent was not involved in the incident which will foreclose the further enquiry ordered by the learned Judge in the matter. There is no justification for awarding compensation to a person who is facing prosecution for a serious offence like murder even before the trial has started."

11. In this context, we may usefully refer to a two Judge Bench decision in *Hardeep Singh v. State of Madhya Pradesh*⁴. In the said case, the appellant was engaged in running a coaching centre where students were given tuition to prepare them for entrance tests for different professional courses. The appellant was arrested and a case under Section 420 read with Section 34 IPC and other sections was instituted. He was brought to the police station in handcuffs and his photographs in handcuffs appeared in the local newspapers. The trial went on for several years and eventually, he was acquitted after 12 years. Thereafter he filed a complaint before the Magistrate which was dismissed for lack of sanction. The High Court being moved had held that complaint was not maintainable and dismissed the same in limine. Thereafter, the victim moved the Government for grant of sanction under Section 197 CrPC for prosecuting the Collector and other government servants which was refused. The said order of refusal came to be assailed in W.P. No.4777 of 2007. The writ petition was dismissed by the High Court. On an intra-court appeal preferred, the High Court dismissed the same.

12. Be it stated, after the acquittal, the appellant had filed writ petition no. 4368 of 2004 contending, inter alia, that he was taken to the police station and was kept there in custody in the night handcuffed by the police without there being any valid reason and his photographs in handcuffs in daily newspapers were published as a consequence of which his elder sister who loved him like a son, died due to shock. It was also contended that the prosecution knew from the beginning that the cases registered against him were false and it purposefully caused delay in conclusion of the trial causing great harm to his dignity and reputation and violating his fundamental right to speedy trial guaranteed under Article 21 of the Constitution. A learned Single Judge of the High Court had admitted the writ petition on the limited question of grant of compensation to the appellant for the delay in conclusion of the criminal case against him. Another Single Judge who finally heard the matter opined that there was no case for compensation. In intra-court appeal, the Division Bench reversed the same and granted compensation of Rs.70,000/- which was enhanced by this Court to Rs.2

lakhs. The analysis made by the Division Bench which has been approved by this Court is to the following effect:-

" The Division Bench further held that there was no warrant for putting the appellant under handcuffs. His handcuffing was without justification and it had not only adversely affected his dignity as a human being but had also led to unfortunate and tragic consequences."

And while enhancing the compensation, the Court held that:-

"..... we find that in the light of the findings arrived at by the Division Bench, the compensation of Rs 70,000 was too small and did not do justice to the sufferings and humiliation undergone by the appellant."

13. Regard being had to the aforesaid enunciation of law, the factual matrix of the case at hand is required to be appreciated. On a close scrutiny of the judgment of the learned trial Judge, it is evident that he has been guided basically by three factors, namely, that the State Government has not established Forensic Science Laboratories despite the orders passed by this Court; that there has been delay in getting the seized articles tested; and that the seizing officer had not himself verified by using his experience and expertise that the contraband article was opium. As far as the first aspect is concerned, it is a different matter altogether. As far as the delay is concerned that is the fulcrum of the reasoning for acquittal. It is apt to note that the police while patrolling had noticed the accused persons and their behaviour at that time was suspicious. There is nothing on record to suggest that there was any lapse on the part of the seizing officer. Nothing has been brought by way of evidence to show that the prosecution had falsely implicated them. There is nothing to remotely suggest that there was any malice. The High Court, as is noticed, has not applied its mind to the concept of grant of compensation to the accused persons in a case of present nature. There is no material whatsoever to show that the prosecution has deliberately roped in the accused persons. There is no malafide or malice like the fact situation which are projected in the case of Hardeep Singh (supra). Thus, the view expressed by the learned trial Judge is absolutely indefensible and the affirmance thereof by the High Court is wholly unsustainable.

14. In view of the foregoing analysis, the appeal is allowed and the order of the trial Judge granting compensation and that of the High Court giving stamp of approval to the same are set aside. "

It would also be useful to refer to the judgment of the Supreme Court in the case of **Indian Oil Corpn. VS NEPC India Ltd. And Others**, 2006 6 SCC 736, Paragraph No.14 is reproduced below:-

"14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step

that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

From the aforesaid judgments, the following points can be culled out so as to invoke Section 250 Cr.P.C.:-

1] That there is no material against the accused to initiate the proceedings;

2] It is necessary to show that the complainant has initiated the proceedings against the accused maliciously, i.e., with malafide intention or malice meaning thereby there should be malicious prosecution;

or

3] The proceedings initiated must be frivolous or initiated with ulterior motive on the part of the complainant.

[10] Taking into consideration the exposition of law of the Supreme Court and after considering Section 250 of Cr.P.C., it is necessary to appreciate the basic facts of the present case. S.C.C. No. 2110/2013 was registered by the present appellant Prashant Himmatrao Jawarkar against the present respondent Dr. Ganesh Pandurang Vasu for the offence punishable under Section 138 of the N.I. Act. It is alleged that the respondent is a medical practitioner / Doctor. It is further alleged that the complainant and accused are well acquainted with each other. The respondent was in need of money, and therefore, a request was made to complainant to a give hand loan of Rs.3,00,000/-. Considering the relationship between them, the complainant gave a hand loan of Rs. 3,00,000/-. The accused / respondent assured to complainant / appellant that he will repay the said hand loan as early as possible, and accordingly, the respondent towards discharge of the said existing legal liability issued a cheque on 20/03/2013 bearing No. 232800 of Rs.3,00,000/- drawn on State Bank of India in favour of the complainant. When the cheque was presented for encashment through his Banker - Nishant Multi State Co-operative Credit Society Ltd., Akola Branch, Akola on 22/03/2013, the said cheque dishonoured and was returned unpaid by the SBI by its cheque return memo dated 22/03/2023 for the reason "Funds Insufficient". Accordingly, the information was received by the complainant on 22/03/2023 itself. It further appears that this fact was informed to the respondent / accused, however, the respondent has not paid any heed. Accordingly, the appellant issued legal notice through Advocate by R.P.A.D. on 20/04/2013 calling the accused to make the payment of cheque amount within 15 days from the receipt of the said notice. The said notice was received on 22/04/2013 by the respondent, but the respondent failed to comply with the said notice, and accordingly, the complaint was filed for the offence punishable under Section 138 of the N.I. Act.

[11] It appears from the record that evidence was recorded by the Trial Court. The defence of the respondent / accused was that the accused / respondent was not acquainted with the complainant. The complainant has misused the cheque by joining

hands with his friend Vinod Meshram. It further appears that the respondent denied the fact that he has taken a hand loan from the appellant and he has also denied issuance of cheque in favour of the appellant. It is his further defence that he is acquainted with one Vinod Meshram who was in need of money, and therefore, he has availed loan facility for Vinod Meshram from Akshay Vyavsaik Nagri Sahakari Pat Sanstha Ltd., Akola. For availing the loan he has mortgaged the property of Vinod Meshram and for the security purpose, the respondent has kept the blank cheque of SBI with the said Pat Sanstha. The repayment was done by the Vinod Meshram himself, however, after repayment of the loan, one of the blank cheque was taken by Vinod Meshram which was misused in collusion with the complainant, and accordingly, he has placed reliance on the documents at Exh.61 to 75. Not only that, the respondent has also examined one of the employee of the Pat Sanstha, namely, Makarand Korranne. After going through the entire evidence, it appears that the signature on the cheque was not denied by the respondent. It is further to be noted that witness, Makarand Korranne, who was the manager of Akshay Vyavsaik Nagri Sahakari Pat Sanstha admitted that as per the rules Pat Sanstha cannot take blank cheques from the borrowers. It further appears from the evidence of Makarand that seven cheques were returned to the respondent when he was manager of the Pat Sanstha.

[12] Now considering the above evidence, the only question before me is whether there are reasonable grounds to file the complaint by the complainant under Section 138 of the N.I. Act against the respondent and whether the Trial Court is justified in invoking Section 250 of the Cr.P.C. To answer this some important factors are necessary to be taken into consideration. The evidence on record goes to show that the cheque bearing No.232800 at (Exh.20) is having signature of the respondent, which is admitted in evidence by the respondent. There is cheque return memo of SBI bank at Exh.21, demand notice at Exh.22, Postal Acknowledgment at Exh.23, Postal Receipt at Exh.24, reply of accused to the notice at Exh.25 and some receipts at Exh.26 & 27. Therefore, all these documents goes to show that cheque was having signature of the respondent, which was presented to the Nishant Pat Sanstha by the complainant. Therefore, the fact remains that in order to proceed under Section 138 of the N.I. Act, there are reasonable grounds.

[13] It is also a matter of fact that the said cheque was dishonored for "Insufficient funds". Further there was cheque return memo of the SBI Bank, demand notice was served, service of notice is also placed on record, therefore, there was procedural compliance and as the cheque dishonoured, the case was filed by the complainant due to the fact that respondent has failed to repay the hand loan amount. Therefore, it cannot be said that there are no reasonable grounds for initiation of the proceedings under Section 138 of N.I. Act. It is to be kept in mind that acquittal from the case by itself would not be sufficient to invoke the provisions of Section 250 of the Cr.P.C. as was observed by the Supreme Court in the case of **State of Rajasthan VS Jainudeen Shekh (supra)**, there should be malicious prosecution. So far as malicious prosecution

is concerned, absolutely there is no finding to that effect. On the contrary, the Trial Court has said that the complainant has misused the cheque, however, there are certain findings which are on the basis of surmises and presumption, so far as invoking provision of Section 250 of Cr.P.C. is concerned. It is further to be noticed that there is no evidence in regard to issuance of blank cheque to the Pat Sanstha as security, however, the Court has observed that "in the light of these factors it is also proved by the accused that he had given the blank cheque to the pat sanstha as security." On the contrary, the witness Makarand Korranne, in his cross-examination admitted that Pat Sanstha is not allowed to take blank cheque from the borrowers. Further, Trial Court has given much importance while awarding Rs.25,000/- to the accused on the fact that the return memo of Nishant Credit Society is not placed on record. However, only return memo of drawee Banker, i.e., SBI Bank is placed on record by the complainant and on the back side of the cheque at Exh.20, the endorsement is seen as of the Peoples Co-operative Bank Ltd., Hingoli, Branch Akola, which is dated 22/03/2013. For this the explanation was called from the complainant before invoking the provision of Section 250 of Cr.P.C. Accordingly, the complainant has given his explanation and submitted that the cheque at Exh.20 was forwarded by the Nishant Pat Sanstha to their authorised Bank, i.e., Peoples Co-operative Bank. This Peoples Co-operative Bank is linked with Nishant Pat Sanstha. Moreover, the date mentioned on the return memo at Exh.21 of the drawee bank of SBI is written in Marathi as 24/03/2013, and accordingly, the learned counsel for the appellant submits that it is not in the hands of the complainant once he has presented the cheque for encashment to the Nishant Pat Sanstha what is written at the back side. However, he submits that the signature on the cheque was not denied by the respondent.

[14] There may be discrepancies in the evidence, there may be shortfalls in the case of the complainant or there may be fact that the complainant fails to prove the case. These factors would not lead to invoke Section 250 of Cr.P.C. Further the proceedings may fail due to N-number of reasons, however, for invocation of Section 250 of Cr.P.C, as was observed supra, there should be malicious prosecution and there should be finding to that effect while rendering the judgment. The entire tenor of the Judgment depicts that the Court has culled out major discrepancies which are as under:-

"50] In short the following major discrepancies are found in the complainant's case as;

- i) The date on which the consideration amount is handed over is missing.
- ii) The reasons for delivery of hand loan as described by the complainant are not believable when the accused himself is well off as evident from record.
- iii) The cheque return memo of Nishant Multi-State Co-operative Credit Society Ltd., Akola, Branch Ranpise Nagar, Akola is not placed on record consequently, it is not proved.
- iv) Name of the Payee's bank is not mentioned in the return memo of drawer bank i.e. S.B.I.

v) On the back side of the cheque, the name of stranger bank is written for clearance having dtd. 23.03.2013 which is one day after, when as per the complainant, cheque returned dishonoured on 22.03.2013. how it does happened that is not focused by the complainant.

vi) Alleged cheque is of subsequent dt. 20.03.13, when the accused has already made his loan account NIL on 20.01.13."

[15] Therefore, from these major discrepancies one can come to the conclusion that the complainant has failed to prove his case, however, it cannot lead to invoke Section 250 of Cr.P.C. Not only that from the entire evidence, I do not find that the complaint was lodged with mala fide intention or there is malice on the part of the complainant to prosecute the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Therefore, considering the above facts and circumstances of the case, the findings arrived at by the Trial Court to the extent of granting compensation by the complainant / present appellant Prashant Himmatrao Jawarkar the accused Dr. Ganesh Pandurang Vasu, does not sustain in law, and therefore, the appeal deserves to be allowed to that extent only. Therefore, the finding only to the extent of invoking Section 250 of the Cr.P.C. is perverse. Hence, the following order:-

O R D E R

- (i) The Appeal is **partly allowed;**
- (ii) The order dated 16/03/2017 passed by Judicial Magistrate First Class, Court No.5, Akola, in S.C.C. No. 2110/2013 is hereby quashed and set aside only to the extent of awarding compensation of Rs.25,000/- to the accused from the complainant;
- (iii) The appeal is disposed of, accordingly

2026(1)McrJ103

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

(Hon'ble Judge: M M Nerlikar)

Criminal Writ Petition No 928 of 2024 **dated 17/11/2025**

Sumit S/o Karan Singh Gautam; Imran S/o Abdul Haquie Turak; Ashish S/o Narendra Gajbhiye; Firozkhaa S/o Moharamkhaa Pathan

Versus

State of Maharashtra

SUPPLEMENTARY CHARGE-SHEET

Code of Criminal Procedure, 1973 Sec. 173 - Supplementary Charge-Sheet -
Petitioners challenged order permitting prosecution to file supplementary charge-sheet -
- Contended that Investigating Officer did not obtain leave for further investigation

and no new material produced - Record showed permission granted by Court and statement of informant implicating petitioners placed on record - CCTV and mobile footage also part of investigation - Court held further investigation continuation of earlier investigation and right of investigating agency cannot be curtailed - Filing at later stage not fatal - Observed that whether petitioners involved is matter of trial - Interference in interlocutory order not warranted - Petition Dismissed

Law Point: Supplementary charge-sheet after permission under Section 173(8) CrPC valid as further investigation forms part of initial investigation - Delay or timing of submission does not vitiate proceedings if permission duly granted.

Acts Referred:

Code of Criminal Procedure, 1973 Sec. 173

Counsel:

A Saxena, B M Lonare

JUDGEMENT

M.M. Nerlikar, J.- [1] Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

[2] The petitioners challenge the order dated 09/09/2024, wherein, the application filed by the prosecution for seeking permission to file additional charge-sheet on record is allowed and the permission is granted to submit supplementary charge-sheet on record.

[3] The learned counsel appearing for petitioners submit that the Investigating Officer has not sought permission / leave from the learned Magistrate for conducting the further investigation. He further submits that there is no material against the petitioners to connect them with the crime. Even if the statement recorded by the Investigating Officer of the informant is taken into consideration, the same does not demonstrate that there is an overt act on the part of petitioners. The original charge-sheet was filed on 12/01/2022, however, the statement dated 12/01/2022 of Rahul Pandurang Deshpande, who is the informant is not filed on record alongwith original charge-sheet. It was submitted that with mala fide intention, the Investigating Officer has implicated the present petitioners in the crime. Lastly, he relied on the Judgment of the Supreme Court in the case of **Vinay Tyagi VS Irshad Ali Alias Deepak and Others**, 2013 5 SCC 762, to submit that if the leave is not sought from the learned Magistrate, then the supplementary charge-sheet would not be maintainable, and accordingly, he prayed to quash and set aside the order dated 09/09/2024 passed by the learned Additional Sessions Judge, Bhandara.

[4] On the other hand the learned A.P.P. submits that admittedly the charge-sheet is filed on 12/01/2022, however, thereafter, the statement of informant was recorded. He further pointed out that the petitioners have sought anticipatory bail and there is also sufficient evidence against the petitioners as the incident was captured in the

C.C.T.V. footage as well as in the mobile phone. There were some serious lapses on the part of the Investigating Officer, and therefore, the Court below, while passing the order below Exh.82, in view of aforesaid lapses directed the Superior Officer to take necessary action against the Investigating Officer. Lastly, he submits that further investigation is the continuation of the initial investigation, and therefore, there is no merit in the petition and it deserves to be dismissed.

[5] Upon hearing the learned counsel for petitioners and the learned A.P.P., it appears that the original charge-sheet was filed on 12/01/2022, and on the same date, the statement of the first informant was also recorded. There is no dispute regarding the filing of the charge-sheet on 12/01/2022, however, the learned counsel appearing for the petitioners has submitted that the statement of the informant was recorded on the same day without there being any evidence against the petitioners. It is true that the statement was recorded on 12/01/2022, however, whether it was recorded before or after filing of the charge-sheet is a disputed question of fact and this Court cannot go into same. The fact remains that the said statement implicates the present petitioners.

[6] Admittedly, the supplementary charge-sheet was filed only after the Court granted permission on 09/09/2024 by allowing the application of the Investigating Officer. The argument of the learned counsel for the petitioners that there is no new material to justify the filing of the supplementary charge-sheet deserves no consideration for the reason that the record shows that the statement of the first informant recorded on 12/01/2022, the details in respect of the present petitioners, the list of witnesses to be examined, and the order granting anticipatory bail was placed on record through the supplementary charge-sheet. The incident which was captured in the CCTV footage and in the mobile phone has already been placed on record which is part of the original charge-sheet. Prima facie, it appears that the Trial Court, after considering the entire material that surfaced on record, has permitted to file the supplementary charge-sheet on record. The Trial Court has held that the purpose of the supplementary charge-sheet in the present case is to include additional accused persons to try them together with the original accused based on the same evidence already presented and to avoid multiplicity of proceedings, the application under Exh.82 is allowed permitting to file supplementary charge-sheet on record. Whether the petitioners are involved in the crime or not and whether the statement of the informant recorded on 12/01/2022, C.C.T.V. footage and mobile recording are to be considered or not would be based on the evidence which would be led by the Prosecution and the same cannot be considered at this stage.

[7] However, the right of the Investigating Officer to file a supplementary charge-sheet cannot be curtailed. Further investigation is the continuation of the earlier investigation. Even if it is considered that the supplementary charge-sheet was filed at a belated stage, that by itself is not sufficient to quash the order granting permission to file the supplementary chargesheet. As pointed out by the learned counsel for the

petitioners, the observations of the Supreme Court in the case of Vinay Tyagi (supra), paragraph 49, is reproduced below:-

"49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct "further investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of the court, The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct "further investigation" and/or to file a "supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process."

It would also be useful to refer to the observations of the Apex Court in the recent judgment of **State Through Central Bureau of Investigation VS Hemendhra Reddy and Another**, 2023 16 SCC 779, wherein it is held that further investigation dehors any direction from the Court, paragraph Nos. 60 to 68 are reproduced as under:-

"60. This Court in Hasanbhai 11 held thus: (SCC pp. 350-51, paras 12-13)

"12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognizance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.

13. In **Ram Lal Narang v. State (Delhi Admn.)**, 1979 2 SCC 322 [1979 SCC (Cri) 479: AIR 1979 SC 1791] it was observed by this Court that further investigation is not altogether ruled out merely because cognizance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further

investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice."

61. In **Ram Lal Narang v. State (Delhi Administration)**, 1979 2 SCC 322, this Court held thus:

"21. As observed by us earlier, there was no provision in the CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation."

62. In **State of Andhra Pradesh v. A.S. Peter**, 2008 2 SCC 383, this Court held thus:

"9. Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police. A distinction also exists between further investigation and reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not."

63. In **Nirmal Singh Kahlon v. State of Punjab and Others**, 2009 1 SCC 441, this Court held as follows:

"68. An order of further investigation in terms of Section 173(8) of the Code by the State in exercise of its jurisdiction under Section 36 thereof stands on a different footing. The power of the investigating officer to make further investigation in exercise of its statutory jurisdiction under Section 173(8) of the Code and at the instance of the State having regard to Section 36 thereof read with Section 3 of the Police Act, 1861 should be considered in different contexts. Section 173(8) of the Code is an enabling provision. Only when cognizance of an offence is taken, the learned Magistrate may have some say. But, the restriction imposed by judicial legislation is merely for the purpose of upholding the independence and impartiality of the judiciary. It is one thing to say that the court will have supervisory jurisdiction to ensure a fair investigation, as has been observed by a Bench of this Court in **Sakiri Vasu v. State of U.P.**, 2008 2 SCC 409 [(2008) 1 SCC (Cri) 440], correctness whereof is open to question, but it is another thing to say that the investigating officer will have no jurisdiction whatsoever to make any further investigation without the express permission of the Magistrate."

64. In Vinay Tyagi (supra), it was held that "further investigation" in terms of Section 173(8) of the CrPC can be made in a situation where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the Court. The report on such further investigation under Section 173(8) of the CrPC can be termed as a supplementary report.

65. In Vinay Tyagi (supra), it was held that: (SCC p.790, para 40)

"40.2. A Magistrate has the power to direct "further investigation" after filing of a police report in terms of Section 173(6) of the Code.

* * *

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6. It has been a procedure of propriety that the police has to seek permission of the court to continue "further investigation" and file supplementary chargesheet. "

66. In Vinubhai (supra); a three-Judge Bench of this Court has endeavoured to lay at rest the controversy enveloping the evasive issue of further investigation directed by the Magistrate. This Court, speaking through Justice R.F. Nariman, has laid down at Para 42 that: (SCC p. 39)

" 42. ... To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation

should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law."

It was also clarified that: (Vinubhai case 5 , SCC p.21, para 28)

"28. The "investigation" spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun."

67. Thus, this Court, in conclusion, observed that,

"27. ... when Section 156(3) states that a Magistrate empowered under Section 190 may order "such an investigation", such Magistrate may also order further investigation under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h)."

68. Thus, in view of the law laid down by this Court in the various decisions cited hereinabove, it is well settled that sub section (8) of Section 173 of the CrPC permits further investigation, and even dehors any direction from the court, it is open to the police to conduct proper investigation, even after the court takes cognizance of any offence on the strength of a police report earlier submitted.

The same view is reiterated in the case of **Bohatie Devi (Dead) Through Legal Representatives VS. State of Uttar Pradesh and Others**, 2023 16 SCC 349.

[8] From the law laid down in the aforesaid judgments, it can be concluded that though there is no specific requirement under Section 173(8) of the Cr.P.C. to obtain leave of the Court for conducting further investigation, however, it is a matter of long-standing practice and a procedure of propriety to seek permission of the Court to continue further investigation and file supplementary charge-sheet. However, merely not obtaining leave of the Court will not, by itself, vitiate the filing of the supplementary charge-sheet, as it is a settled position of law that it is a right of the Investigating Officer to further investigate in respect of offence even after a report under SubSection (2) of Section 173 Cr.P.C. is forwarded to a Magistrate and prior approval of the Magistrate is not required.

[9] It could be seen from the supplementary charge-sheet that the Investigating Officer has recorded the statement of the first informant, wherein, the names of the present petitioners are apparent. If that is coupled with the CCTV footage, then there appears to be sufficient material against the present petitioners. The reasoning provided by the Trial Court for permitting to file supplementary charge-sheet which is arraying the present petitioners as new accused persons so as to prevent multiplicity of proceedings is justified and in this view of the matter, I do not find any error in the order of the Trial Court passed below Exh.-82 by the learned Additional Sessions Judge, Bhandara, dated 09/09/2024. Accordingly, the present petition is **dismissed**.

It is needless to mention at this juncture that the Trial Court shall not be influenced by the observations of this Court while conducting the trial

2026(1)McrJ110

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Shyam C Chandak)

Criminal Appeal No 1064 of 2019 **dated 14/11/2025***Kalim Attarli Shaikh***Versus***State of Maharashtra; X Y Z***SEXUAL ASSAULT ON MINOR**

Indian Penal Code, 1860 Sec. 354 - Code of Criminal Procedure, 1973 Sec. 164, Sec. 313 - Evidence Act, 1872 Sec. 9 - Protection of Children from Sexual Offences Act, 2012 Sec. 10, Sec. 8 - Sexual Assault on Minor - Appeal against conviction under Sec. 354 IPC and Sec. 10 POCSO Act - Victim aged five years deposed offender called her on pretext of fruit, removed her clothes and touched private parts - Testimony consistent with mother and sister and corroborated by prompt report - Medical evidence confirmed absence of penetration but supported incident - Defence of false implication rejected - Court upheld finding of guilt and sentence imposed by trial court - Appeal dismissed

Law Point: Conviction can rest on consistent and reliable testimony of child victim supported by prompt reporting and medical evidence-Absence of injury not material where sexual intent established-Appellate court should not interfere with well-reasoned conviction under POCSO Act.

Acts Referred:

Indian Penal Code, 1860 Sec. 354

Code of Criminal Procedure, 1973 Sec. 164, Sec. 313

Evidence Act, 1872 Sec. 9

Protection of Children from Sexual Offences Act, 2012 Sec. 10, Sec. 8

Counsel:

Vaibhav Hari, Kushal Mor, Tanveer Khan

JUDGEMENT

Shyam C. Chandak, J.- [1] This Appeal seeking an exception to the Judgment and Order dated 15/02/2017, in POCSO Special Case No.1094/2013, passed by the learned Designated Judge under the Protection of Children from Sexual Offences Act ("**POCSO Act**"), for Gr. Bombay thereby the Appellant was convicted for commission of the offence punishable under Section 354 of the Indian Penal Code, 1860 and under Section 10 of the POCSO Act. Under Section 354 of I.P.C., the Appellant was sentenced to suffer S.I. for one year and to pay fine of Rs.1000/-. In

default, he was further sentenced to suffer S.I. for one month. Under Section 10 of the POCSO Act, he was sentenced to suffer S.I. for five years and to pay fine of Rs.5,000/- . In default, he was further sentenced to suffer S.I. for one month.

[2] Heard Mr Hari, the learned Counsel for the Appellant and Mr Khan, the learned APP for the Respondent-State. Perused the record.

[3] The prosecution story is that, the victim girl, aged 5 years (PW1) was daughter of the first informant 'Mrs. R' (PW2). The Appellant and the family of PW2 were residing in neighbour. On 28/07/2013, at about 11.00 a.m., PW2 was present at her work place. At that time, her daughter 'M' came there and told PW2 that the people residing in their Chawl had called her and she should come home soon. Therefore, immediately, PW2 came home. A crowd had gathered in front of her room. On enquiry, the members of the crowd told her that, at about 11:00 a.m., PW1 came out of the house of the Appellant by shouting. Therefore, PW2 inquired with PW1 and the later told her that the Appellant outraged her modesty. Then, the people gathered there inquired with the Appellant and tried to catch him, but he fled away. At that time, PW1 was crying. Then, PW2 took PW1 inside her room and inquired with her. PW1 disclosed that, "I was playing with 'Ms. A' in the lane, at the time, Salman's brother Kalim, residing in neighbour, showed an orange, and said us that, "will give you an orange to eat", therefore, we both went to his room, but he told 'Ms. A' to go away by giving her an orange and took me in his arms, removed my nicker and kissed me." Further, pointing at her genital, PW1 told that, "and touched the hand here." Therefore, PW2 filed the Report (Exh.10) with Shivaji Nagar Police Station, at Govandi, Mumbai therein she narrated as above. PW6 PSI Kamble recorded the Report and registered the FIR bearing C.R.No.221/2013, under Sections 354 of I.P.C. and under Section 8 of POCSO Act.

[4] During the investigation, the Police referred the victim for medical, recorded the Spot Panchanama and the statements of the witnesses. Additionally, the police obtained the statements of the witnesses recorded under Section 164 of Cr.P.C. The appellant was arrested. On completion of the investigation, police submitted the charge-sheet for the said offences.

[5] However, the trial Court framed the charge under Section 354 of the I.P.C. and under Section 10 of the POCSO Act. The Appellant abjured the guilt and claimed to be tried. His defence was of denial and false implication.

[6] The prosecution examined 6 witnesses, i.e., the victim, her mother, sister, the Civil Judge Senior Division who had recorded the statement of the victim under Secion 164 of Cr.P.C., Medical Officer and PW6 PSI Vinod Kamble who had recorded the FIR and conducted the investigation.

[7] In his statement recorded under Section 313 of Cr.P.C., the Appellant denied the incriminating evidence and stated that, he was not residing in Govandi and that, the witnesses have deposed against him as they wanted to extract money from him.

[8] On appraisal of the prosecution evidence, the trial Court held the Appellant guilty of the offence punishable under Section 354 of I.P.C. and under Section 10 of POCSO Act. Hence, convicted and sentenced the Appellant as noted above. Aggrieved, the Appellant is before this Court.

[9] Mr Hari, the learned Counsel for the Appellant submitted that there is material inconsistency in the evidence of PW1, PW2 and PW5. The incident was witnessed by PW1's friend 'A', but she was not examined. The evidence indicates that a crowd had gathered in front of the house of the victim. However, no independent person from the said crowd was examined to corroborate the version of PW1, PW2 and PW5. The medical evidence does not show that PW1 had sustained any injury due to the alleged act by the Appellant. PW1 and PW2 have not identified the Appellant as the person who had sexually assaulted and outraged modesty of PW1. Therefore, the evidence of these three witnesses was not reliable. However, the trial Court and the appellate Court have relied upon their testimonies and accepted the prosecution case, which is erroneous. Therefore, the impugned judgment and Order of conviction and sentence is not correct, and it may be quashed and set-aside.

[10] In contrast, Mr Khan, the learned APP submitted that PW1 has categorically stated that the Appellant had called her and her friend 'Ms A', on the pretext of giving an orange. However, the Appellant asked the victim's friend to go away and took her inside the room. Further, the Appellant removed PW1's nicker and sexually assaulted her, who was just aged 5 years. Therefore, PW1 cried and immediately came out of the room. Then, PW1 went home and disclosed the incident to PW5. Both PW2 and PW5 have corroborated the version of the victim. The Report (Exh.10) was lodged very promptly, and it ruled out the possibility of falsely implicating the Appellant in this case. That apart, the witnesses had no reason to depose false against the Appellant. Therefore, the trial Court relied upon the prosecution story and convicted the Appellant. As such, the Appeal is devoid of any merit.

[11] To appreciate these submissions, it is necessary to look into the evidence on record. Considering the offences for which the Appellant has been convicted, the testimony of the victim-PW1 is very important.

[12] Pw1 deposed that, 'M' was her sister. Her mother PW2 was working. Kalim (Appellant) was residing in her neighbour. At the time of the incident, she was playing with 'A' and other girls in the lane. Kalim showed them an orange and called her to eat. She went to Kalim, but he held her hand and took her inside his room. She deposed that then Kalim gave an orange to 'A' and told her to go away. She deposed that Kalim then did a bad act with her. She deposed that he removed her nicker and moved his hand on her place of urination. Therefore, she cried. But he told her to keep quiet. She deposed that she then went home running. Her mother had gone for work and her sisters were at home. She deposed that she told the incident to her sisters 'S' and 'M'. The latter suggested to call their mother. She deposed that sister 'M' called PW2. PW1 deposed that, she told the incident to PW2, therefore, PW2 went to the room of Kalim

to search him but the room was locked. PW1 deposed that PW2 took her to the police station. The police had inquired with her. She had disclosed the incident to the police. She was sent to the hospital along with PW2.

In the cross-examination, PW1 deposed that her father had not come to the police station. Her friend 'A' was residing near her house. She has stated that the Appellant was residing to the side of her house. Police had told her as to what she should state.

[13] Pw2 deposed that at the time of the incident, she was at her workplace. Her daughter 'M' came there, and informed that one Mosambiwala took PW1 in his room on the pretext of giving a sweet lime and thereafter, PW1 started crying and he sent her outside. PW2 deposed that, therefore, she came home alongwith daughter 'M' and inquired with PW1. At that time, PW1 told her that the Mosambiwala took her inside his house, removed her nicker and when she started crying, he sent her out. PW2 deposed that she then went to the house of Mosambiwala, but his room was locked, and he had run away. PW2 deposed that then she called her husband on the phone. Thereafter, she went to the police station alongwith her husband and PW1. PW2 deposed that she narrated the incident to the police. The police recorded her statement-cum-Report as per her narration. The police referred PW1 for the medical. PW2 has identified her Report (Exh.10). PW2 deposed that, Kalim's father was residing in front of her house. At the time of the incident, Kalim had come to his father's house.

In the cross-examination, PW2 deposed that it is not mentioned in her police statement that her daughter 'M' had informed her about the incident. She was present with PW1 at the time of recording her statement. She has denied that she herself was giving the information to the police instead of PW1. She has admitted that she went to the police station 2 to 3 hours after she came to know about the incident. She has denied that her neighbour told her about the incident and asked her to lodge a false report against the Appellant. She has denied that the Report (Exh.10) is false. She has denied that, she has deposed falsely against the Appellant.

[14] Pw5, sister of the victim, deposed that on the date of the incident, at about 11.00 a.m., her parents had gone out to work and they four sisters and a brother were at home. PW1 and her friend 'A' were playing in the lane. PW5 deposed that Kalim had called PW1 in his house, therefore, she went there. Then, Kalim removed PW1's nicker, touched her private part and kissed her on mouth. She deposed that then PW1 pulled up her nicker. PW5 deposed that he then gave a sweet lime to PW1 and told her to go home and not to disclose the incident to anybody. She deposed that PW1 came home and told her the entire incident. PW5 deposed that she then went to Kalim's house and questioned him as to why he had committed the said act. But, he denied having committed the said act. She deposed that on hearing her noise, people from the chawl gathered there. At that time, Kalim ran away from the backside door of his room. She deposed that she then called her mother from her work place, and they told the incident to the mother. Thereafter, her mother PW1 to the police station. PW5

deposed that Kalim was residing near her house, therefore, she can identify him. Her statement was recorded by the police.

In the cross-examination, PW5 deposed that she had gone to the police station as PW2 had insisted her to give her statement. She has admitted that when she had gone to the police station, PW2 had accompanied her.

[15] Pw3 Savita Mahale, CJSd deposed that she had recorded the statement (Exh.12) of PW1 under Section 164 of Cr.P.C., in the presence of PW2. She has identified the said statement.

[16] Pw4 Dr. Supe deposed that she was working in Obsc. and Gynec. Department at Rajawadi Hospital. On 28/07/2013, at about 06:37 p.m., the police had brought PW1 to Rajawadi Hospital for medical examination. PW1 was aged years. She examined PW1 with the prior consent of PW2. PW1 and PW2 gave the history of fondling with the lower genital organs on 28/07/2013, at about 10:13 a.m., PW1 stated that she was tempted with fruit. There was no history of penetration. No history of bleeding P.V., spotting P.V. and no history of injury on her body. Accordingly, she issued the medical certificate (Exh.14).

[17] Pw6, the investigating Officer has testified that on 28/07/2012, at about 14.15 hrs., PW2 had visited the police station along with PW1 and neighbors. PW2 narrated him the incident. He recorded her narration as per her say vide Report (Exh.10) and registered this crime No.221 of 2013. PW6 deposed that the father of PW1 showed him the spot of the incident. There, he recorded the spot panchanama (Exh.18) in present of two panchas. He referred PW1 for medical examination alongwith WPC 379. Further, he recorded the statement of witnesses. He deposed that further investigation was done by API Jadhav, who arrested the accused, recorded the statement of some witnesses and filed the charge.

In the cross-examination, PW6 stated that one Mr Meraj was the owner of the room of the Appellant. He has denied that he has registered a false report against the Appellant on the say of PW2. He has denied that the Appellant was falsely implicated in this case.

[18] On careful scrutiny of the testimonies of PW1, PW2 and PW5, I find that their testimony is very consistent. Said testimonies clearly show that the offender had called PW1 and her friend 'A' at his room on the pretext of giving them fruit and then the offender told 'A' to go away. Further, the offender took PW1 inside the house, pulled her nicker and moved his hand on her place of urination. Immediately, PW1 pulled up the nicker, came out of the house and went home. At that time, PW1 was crying, which was very natural. Further, their testimonies show that, on being home, immediately, PW1 disclosed the incident to her sisters 'S' and 'M'. In turn, 'M' went to the place of working of PW2 and called her. Then, PW2 came home and enquired with PW1. At that time also, PW1 disclosed the same incident to PW2. Thus, the conduct of PW1, PW2 and PW5 appears very natural. This is followed by a prompt lodging of the

Report (Exh.10). The history given to PW4 also supports what the three witnesses have deposed. There is absolutely nothing in the prosecution evidence to accept that the said Report was filed after deliberation and concocting a false story. The testimony of PW1 is also consistent with her statement under Section 164 of the Cr.P.C. Therefore, there is no hurdle to rely upon the said evidence of PW1, PW2 and PW5 that, at the time of the incident, the offender called PW1 at his room on the pretext of giving her an Orange and then, sexually assaulted her. This act was certainly an offence punishable under Section 354 of I.P.C. and Section 10 of the POCSO Act.

[19] No doubt, there is some inconsistency in the testimony of PW1, PW2 and PW3. The inconsistency is in respect of whether an Orange was offered or a Sweet Lime. Another inconsistency is that, as stated in the Report (Exh.10) and deposed by PW5, the offender had kissed PW1 on the mouth. This fact is not deposed by PW1 and PW2 in their examination-in-chief. However, said inconsistency is not sufficient to disbelieve the version of PW1 that the offender had removed her nicker and moved his hand on her place of urination.

[20] Now the question is, whether the Appellant has committed this offence or not. In the examination-in-chief, to a question, "Will you be able to identify Kalim if shown to you?", PW1 replied "Yes". However, when the learned APP questioned her as "Is the person present in the Court is the same Kalim, who resides by the side of your house and committed the filthy act with you?" PW1 answered, "No, he is not the same person." At this juncture, the trial Court observed that, "It was noticed that after seeing the accused the child was scared and looked frightened, and she avoided to look in the direction of the accused, and stated that she does not want to depose further." This was followed by a Court question that, "Is it true that the person standing before the Court is the same Kalim who resides by the side of your house and who removed your nicker and moved his hand in your urination?" PW1 answered that, "I do not know. (Nahi malum)". The next Court question was, "Did your mother tell you that today you have to attend the Court?". PW1 answered in the affirmative. Finally, she was questioned, "What else did your mother tell you?" She had answered, "Mummy told me to tell that Kalim did not do the filthy act with me."

[21] In the examination-in-chief, PW2 was specifically asked as to whether the Appellant was the same Kalim whose name was mentioned in her statement and against whom she had filed the complaint. Instead of answering 'yes' or 'no', PW2 was giving evasive answers and was asking the Court how she could identify him when she had not seen him earlier. Further, the learned trial Judge noted that, it appears that the witness was reluctant to give a specific answer, and she was under some pressure.

[22] Thus, PW1 and PW2 have not supported the prosecution to prove that the Appellant was the same person who had sexually assaulted PW1. Therefore, the learned counsel for the Appellant urged that there is not even an iota of evidence to connect him with the commission of the offence and, in fact, it stands disproved that the appellant is the person who had committed this crime against the PW1. However, based on the

demeanor of the witnesses and circumstantial evidence, the learned Judge of the trial Court held that the identity of the Appellant was proved and accordingly, held him guilty of the said offences. In this regard, the learned Judge observed as under.

"25. From the observations of my learned predecessor who recorded the demeanor of the victim (PW-1) and the informant (PW-2), it appears that both the victim and the informant were under pressure while identifying the accused. The victim on being asked specifically has gone to the extent of saying that her mother had told her not to tell that Kalim did the filthy act with her. Though in the cross-examination which was conducted after 21/2 months of recording the examination-in-chief, she on being questioned by the learned advocate of the accused has stated that her mother did not tell her to tell what she should be telling in the court, but the police had told her what she should be saying. Had this been the case that she had been deposing as per the directions of the police, I am of the opinion that she would have definitely identified the accused in the court. From the evidence of the victim (PW-1) and the informant (PW-2) it is evident that the person Kalim who according to them had committed the offence was residing near the house of the victim. The informant (PW-2) had gone to the extent to say that Kalim had come to his father's house at that time. Even Dr. Supe (PW-4) who had recorded the history as given by the victim and the informant had deposed that it was told to her that the offence had been committed by the tenant neighbour. As far as the victim's sister (PW-5) is concerned, she had gone to Kalim's house to question him about the incident. It implies that Kalim was known to her. She had also stated that she could identify Kalim as he was residing near her house. It is further observable that on the day of recording of the evidence of sister of the victim (PW-5), the advocate of the accused had filed exemption application for the accused (Exh.16) and had not disputed the identity of the accused. So it would imply that the accused, if shown to the sister of the victim (PW-5) would have been identified by her as stated by her in her examination-in-chief and also as per the exemption application (Exh.16) of the advocate of the accused."

[23] As noted by the learned Judge of the trial Court, as per the FIR (Exh.10), the address of the Appellant was the same as that mentioned in the Spot Panchanama (Exh.18) and the Arrest Form (Exh.22) and was of the same locality as that of the victim. The Spot Panchanama was admitted by the defence. The arrest form noted that the Appellant was residing at Plot No.40/Q/4, Road. No.13, Bainganwadi, Govandi, Mumbai. PSI Kamble (PW6) stated that the Appellant was residing in the same locality as that of the victim, and he was the neighbour of the victim. PW6 has identified the Appellant in the Court, as on the day of his arrest, i.e., 22.09.2013, he was present in the police station. While recording the Appellant's statement under Section 313 of the Cr.P.C., when he was asked that the victim knew him and he was residing by the side of her house, he answered the question in the affirmative. On a further question being put to him as to whether at the time of the alleged incident, his father was residing in front of the house of the informant and at that time he had come

to his father's house, he had again answered in the affirmative. On another question, he had stated that he was not residing at the address mentioned in the arrest form, i.e., Plot No.40/Q/4, Road. No.13, Bainganwadi, Govandi, Mumbai, but had come there only for one day. There is no cross-examination of the witnesses whether there was any other person by the name Kalim, who was residing in the locality of the victim and who had committed the said act with the victim. In the wake of the above, the trial Court held as under:

"29. Considering the evidence on record it is amply clear that the incident had taken place. Further, though the victim and the informant had not identified the accused in court, but their demeanor and evidence of the other witnesses as to the place where the accused was residing at the relevant time, makes it clear that the accused was the person i.e. Kalim, who had committed the said offence. ..."

[24] Section 9 of the Evidence Act deals with the facts necessary to explain or introduce relevant facts etc. Said Section 9 reads:

"9. Facts necessary to explain or introduce relevant facts.- Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose."

[25] When the identification of a person is at issue, the information that is most beneficial in determining his identity is considered as a relevant fact. On their own, certain pieces of evidence may seem devoid of significance, but when considered in conjunction with other facts, they may acquire meaning. Certain facts support to draw an inference. This category of fact is neither relevant as fact or a fact in issue, but where such fact support or oppose the inference provided by the facts in issue or relevant facts, they become relevant.

[26] In the backdrop of the above discussion, considering the demeanor of PW1 and PW2 and the facts and circumstances established by the prosecution evidence, I am in agreement with the finding recorded by the learned Judge of trial Court that the Appellant was proved to be the same Kalim, who had outraged the modesty of PW1. Additionally, I noticed that immediately after the incident, the Appellant fled away. The Appellant has not explained as to why he had fled, if he was innocent. Therefore, and considering the presumptions in the POCSO Act, an inference is permissible that since the Appellant had committed this crime, he ran away. In this regard, illustration (c) below said Section 9 is relevant and it reads:

"(c) A is accused of a crime. The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8, as conduct subsequent to and affected by facts in issue. The fact that, at the time when he left home, he had sudden

and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly. The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent."

[27] It is also apt refer to the decision in *Visveswaran v. State REP. BY S.D.M.*, (2003) 6 SCC 73 therein, the Appellant before the Hon'ble Supreme Court had abducted the victim (PW1) and her husband (PW2) in the night time. He then took the victim in a hotel and committed rape on her. The Appellant had no mustache and beard at the time of committing the crime. However, when the victim and her husband were examined in the Court, said Appellant had mustache and beard and was wearing a Dhoti. Therefore, the couple could not identify him and deposed that said person is not in the Court. The other relevant witnesses also did not identify him. In the backdrop, in paragraph 11, the Hon'ble Supreme Court observed that, "It does not mean that the acquittal is to follow as a natural corroboratory from the statements of PW1 and PW2. The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a times, crimes are committed under cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence. In the present case, there are clinching circumstances unerringly pointing out the accusing finger towards the appellant beyond any reasonable doubt." Hence, in paragraph 13 it is observed as under:

"13. ..., it is no doubt true that if the evidence of witnesses is examined in isolation, without having regard to the aforesaid principles, there may be considerable force in the submission that the identity of the appellant has not been established and likewise as a result of defective investigation of not holding test identification parade, the benefit should go to the appellant. However, when the case is examined having regard to the aforesaid legal principles, the result would be otherwise.

Circumstances which have been taken into consideration against the appellant by the trial court as well as the High Court are that the appellant, a Police official, was caught from a room in a hotel. The proprietor of the hotel was examined as PW3. The hotel record (Exhibits P-4 and P5) showed booking of the room in that hotel by the appellant and also payment of advance of Rs.100/-. PW3 had also been examined by PW14. The appellant could not explain his whereabouts during the time the offence was committed. He was not cooperative during investigation. He declined to give sample of his semen. He was having different appearance at the time of examination of PW1 and PW2 in Court. At the time of commission of offence, he did not have beard and the moustaches. However, when PW1 and PW2 were examined in Court, he had beard and the moustaches and was wearing Dhoti. The testimony of PW1 and PW2 was straightforward. The witnesses, immediately after the commission of offence, had named the appellant. The non-holding of the test identification parade, having regard to the facts of the case, is not fatal and does not create any reasonable doubt in the case

of the prosecution. We are unable to accept the contention that the identity of the appellant had not been proved. From the proved circumstances, it has been fully established that PW1 was picked up and raped in a hotel room as per the case set up by the prosecution by a police constable who was none other than the appellant. There is no infirmity in the impugned judgment of the High Court. "

[28] In the wake of the above, I hold that the prosecution has proved its case beyond reasonable doubt. The Appellant is rightly convicted and sentenced for the commission of the offence of Section 354 of I.P.C. and Section 10 of the POCSO Act. Therefore, I do not see any reason to set aside the conviction and the sentence imposed on the Appellant. With the result, the Appeal is dismissed.

2026(1)McrJ119

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

(Hon'ble Judge: Nivedita P Mehta)

Criminal Application (Appa); Criminal Appeal (Apeal) No 756 of 2025; 677 of 2006 dated 12/11/2025

Pintu Girdharilal Yadav

Versus

State of Maharashtra

CONCURRENT SENTENCE

Indian Penal Code, 1860 Sec. 34, Sec. 71, Sec. 506, Sec. 376 - Code of Criminal Procedure, 1973 Sec. 482, Sec. 235, Sec. 427, Sec. 31 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528 - Concurrent Sentence - Applicant sought modification of appellate judgment to state that substantive sentences under Sections 376(g) and 506 read with 34 IPC should run concurrently and prayed for release - Application made years after conviction attained finality - State opposed stating speaking to minutes cannot be used to review or modify final judgment - Court observed such application limited to correction of clerical or typographical error and not to alter operative order - Held omission to mention concurrent sentence cannot be treated as clerical error - Applicant at liberty to seek appropriate remedy but relief not grantable under speaking to minutes - Application Dismissed

Law Point: Application for speaking to minutes cannot be invoked to review or modify substantive part of final judgment and is confined to rectification of clerical or typographical errors only.

Acts Referred:

Indian Penal Code, 1860 Sec. 34, Sec. 71, Sec. 506, Sec. 376

Code of Criminal Procedure, 1973 Sec. 482, Sec. 235, Sec. 427, Sec. 31
Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528

Counsel:

S D Chande, A R Chutke

JUDGEMENT

Nivedita P. Mehta, J.- [1] By the present Application for Speaking to the Minutes, the Applicant has requested to mention in the operative part of the judgment and order dated 07.01.2019 passed by the Hon'ble High Court in Criminal Appeal No. 677/2006 that, the substantive sentence imposed under Section 376 (g) of Indian Penal Code (hereinafter referred to "IPC") for 10 years imprisonment and the substantive sentence imposed under Section 506 r/w 34 of Indian Penal Code for 1 year imprisonment shall run concurrently and sought direction against the Jail Authority to release the applicant forthwith.

[2] The facts leading to the instant application in a nutshell are as under.

2.1. The Accused No. 1 namely, Viru @ Virendra S/o. Dhanraj Yadav and the Accused No. 2 namely, Pintu S/o. Girdharilal Yadav (Applicant) both were convicted for the offence punishable U/s. 376 (g) of IPC and each was sentenced to suffer Rigorous Imprisonment for 10 years and to a fine of Rs. 500/- each and in default to suffer further RI for 15 days each. Both the accused were also convicted for the offence punishable U/s. 506 r/w 34 of IPC and each is sentenced to suffer RI for 1 year and to pay a fine of Rs. 500/- and I/D to suffer further RI for 15 days each; as per the judgment and order of conviction dated 01.11.2006 in Special Case No. 09/2005 passed by the learned 10th Ad-hoc Additional Sessions Judge, Nagpur.

2.2 It is significant to note here that, the learned Trial Court in the operative part of the aforesaid Judgment dated 01.11.2006 had miserably failed to observe as to whether both the above substantive sentences imposed upon the accused persons were to run concurrently or consecutively.

2.3. The accused have assailed the aforesaid judgment and order of conviction before the Hon'ble High Court by filing Criminal Appeal No. 677/2006 which was dismissed on 07.01.2019 and the judgment and order of conviction dated 01.11.2006 passed by the learned 10th Ad-hoc Additional Sessions Judge, Nagpur in Special Criminal Case No. 09/2005, convicting the appellants for the offences punishable U/s. 376 (g) and 506 r/w 34 of IPC was confirmed, as the accused were found guilty of the said offences during reappreciation of the evidence by the Hon'ble Court in the criminal appeal.

2.4. It would be necessary to mention here that, in the 1st para of the aforesaid order passed by the Hon'ble High Court on 07.01.2019 in the said criminal appeal, it has been incorrectly observed that, the learned trial court has directed that both the substantive sentences shall run concurrently.

2.5. The accused have thereafter assailed the aforesaid order passed by the Hon'ble High Court before the Hon'ble Supreme Court of India by filing Special Leave Petition, which came to be dismissed and as such, ultimately, the judgment and order of conviction passed by the learned trial court has then attained finality.

2.6. Needless to mention here that the accused had, neither before the Hon'ble High Court nor before the Hon'ble Apex Court has, ever raised any concern regarding the manner or mode of the substantive sentences imposed upon them, to run concurrently or consecutively.

2.7. Further, the Criminal Writ Petition No. 234/2025 filed by the appellant/accused before the Hon'ble High Court for premature release of the applicant also came to be dismissed on 23.07.2025.

2.8. In this view of the matter, the applicant has then moved the instant application for speaking to the minutes and sought incorporation of the words 'both the substantive sentences shall run concurrently' in the operative part of the order passed by the Hon'ble High Court on 07.01.2019 in Criminal Appeal No. 677/2006, arising out of the judgment and order of conviction dated 01.11.2006 in Special Case No. 09/2005 passed by the learned 10th Ad-hoc Additional Sessions Judge, Nagpur whereby, the applicant was convicted for the offence punishable U/s. 376 (g) and U/s. 506 r/w 34 of IPC and sentenced to suffer RI for 10 years and RI for 1 year, respectively and the applicant has also sought his immediate release. Thus, the non-release of the applicant owing to absence of the aforesaid words in the operative part of the order is the core issue leading to the filing of the present application for speaking to the minutes by the applicant.

[3] When the matter was taken up for hearing, the learned counsel for applicant Shri. S.D. Chande has fairly admitted that, after the judgment and order passed by the learned trial court on 01.11.2006, the applicant has neither raised such contention at any time before the Hon'ble High Court in Criminal Appeal nor before the Hon'ble Supreme Court in Special Leave Petition and after lapse of considerable long time, it was raised for the first time by way of the instant application for speaking to the minutes and therefore, the same may be considered by exercising discretion in favour of the accused.

3.1. The learned counsel for applicant Shri. S.D. Chande however submitted that, the Hon'ble High Court while deciding the appeal, in the 1st Para it's order dated 07.01.2019 has observed that the learned Trial Court has directed that 'both the substantive sentences shall run concurrently.' However, in its operative part, the appellate court failed to mention it inadvertently. Therefore, it is necessary to mention those words in the operative part of the order of the appellate court dated 07.01.2019 and as the jail authorities are not considering that, the substantive sentences are directed to run concurrently, the instant application for speaking to the minutes has been moved by the applicant.

3.2. The learned counsel for applicant Shri. S.D. Chande further submitted that the applicant has already completed the substantive sentence U/s. 376 (g) of IPC with remission and now, the applicant is undergoing further one year imprisonment U/s. 506 r/w 34 of IPC. Therefore, for securing the ends of justice, it is necessary to mention in the judgment and order passed by the Hon'ble Appellate Court dated 07.01.2019 that, the substantive sentences shall run concurrently and the jail authorities be directed to release the applicant forthwith as the applicant has completed the substantive sentence U/s. 376 (g) of IPC.

3.3. The learned counsel for applicant Shri. S.D. Chande further submitted that, both the offences of which the accused were convicted, were arising out of one and the same transaction and therefore, the substantive sentences are meant to run concurrently and for the said reason, the omission of the words 'both the substantive sentences shall run concurrently' in the operative order by the learned trial court or appellate court has to be interpreted in favour of the accused and not otherwise and so, the accused may not be allowed to languish in jail further.

3.4. The learned counsel for applicant Shri. S.D. Chande has then relied on the judgment of the Full Bench of the Madhya Pradesh High Court in the case of **Shersingh -versus- State of M.P.**, 1989 CrLJ 632 to submit that, by virtue of Section 482 of Cr.P.C., this Hon'ble Court, under its inherent powers, can order to run the sentences concurrently, even if, the trial court or the appellate or revisional court has not exercised its discretion under Section 427 of Cr.P.C. and even though the conviction has become final. Similarly, he has also relied on the judgment of the Bombay High Court in the case of **Satnam Singh Puransing Gill -versus- State of Maharashtra**, 2009 AllMR(Cri) 1351 (2009 SCC Online Bom 52) to contend that, an obligation of a mandatory nature is casted upon the courts under Section 427 of Cr.P.C. to provide the benefit to the convict and discretionary power is vested in the courts to direct sentences to run concurrently.

[4] Per contra, the learned APP Mr. Amit Chutke at the outset has urged that, apart from the fact of inordinate delay in approaching the court, the reliefs sought by the applicant by way of an instant 'application for speaking to the minutes' are, in fact, of the nature of review and/or modification of the order and hence, are itself wholly unsustainable in law and cannot be granted in view of the law laid down by the Hon'ble Apex Court in the case of **Akhil Bharatvarshiya Marwari Agarwal Jatiya Kosh And Others -Versus- Brijlal Tibrewal And Others**, 2019 2 SCC 684. Relying on the said judgement, he vehemently submitted that, an application for speaking to the minutes can be entertained only for the purpose of correcting a typographical error or an error through oversight, which might have occurred while transcribing the original order. However, it cannot be considered on par with a review application or with an application for clarification or modification of order, otherwise, it may amount to virtually modifying the original judgment and order of conviction and hence, would be beyond jurisdiction of this Hon'ble Court in regard to scope of deciding such an

application for speaking to the minutes. He submitted that in the said judgment, the Hon'ble Apex Court has also considered the judgment of the Gujrat High Court in the case of Kotak Mahindra Bank Ltd. -Versus Official Liquidator of M/s. Gujrat BD Luggage Lts. & Ors, 2012 SCC OnlineGuj 4339.

4.1. The learned APP Mr. Amit Chutke would then submit that recently, the Hon'ble Apex Court in the case of **Filomena Saldanha Through Power Of Attorney Mr. Frazier Saldanha -Versus- Sunil Kohli Represented By His Power Of Attorney, Mr. Naval Bowry & Ors**, 2025 INSC 595 has noted the scope of such applications as pronounced by it in the judgment of **Akhil Bharatvarshiya Marwari Agarwal Jatiya Kosh And Others -Versus- Brijlal Tibrewal And Others**, 2019 2 SCC 684 and therefore, it still holds the field. He would then further submit that the applicant is at liberty to take appropriate recourse as is available in law and withdraw the present application.

4.2. The learned APP Mr. Amit Chutke further submitted that, when it was incorrectly mentioned in the 1st para by the appellate court that, the trial court has directed concurrent running of both the substantive sentences, then, in that case, it was the duty of the applicant to point out it to the Hon'ble court then and there only so as to enable it to correct its mistake. However, the applicant has with an ulterior motive kept mum for so many years. He further submitted that those observations in para 1 of the order dated 07.01.2019 are nothing but an inadvertent passing remark which are contrary to the record and hence, are of no use and consequence now to the applicant.

4.3. The learned APP Mr. Amit Chutke then took me through Section 31 and Section 427 of Code of Criminal Procedure (hereinafter referred as "Cr.P.C.") and submit that, on a plain reading of section 31, it is seen that it is left to the discretion of the court imposing sentence as to whether the sentence should be made consecutive or concurrent and it appears that normally, the substantive punishment of imprisonment shall commence one after the expiration of other unless the court directs that the said punishment shall run concurrently. Thus, if the court does not direct, it would mean the punishment shall run consecutively one after the other. Further, when the sentences are made to run concurrently, the court has to direct so. Further, the omission to state the order of consecutive running of the sentences cannot ipso facto lead to concurrent running of the sentences and that, the principle related with single transaction cannot be imported for dealing with such omissions. In support of his submissions, he has relied on the judgment of the Hon'ble Supreme Court in the case of **Sunil Kumar Alias Sudhir Kumar And Another -Versus- State of Uttar Pradesh**, 2021 5 SCC 560. The learned APP Mr. Amit Chutke would further submit that, in this case, the reliance placed by the learned counsel for the applicant upon section 427 of Cr.P.C. is wholly misconceived for the reason that, section 31 deals with sentences of multiple offences imposed upon a convict in one trial whereas section 427 relates to multiple trials and the sentences that are dealt with in a subsequent conviction. Therefore, in the present case, only section 31 has application and not section 427 of Cr.P.C.

4.4. The learned APP Mr. Amit Chutke fairly admits that in many judicial pronouncements it has been held that, when one or more offences occurred in the course of a single transaction, the substantive sentences are to run concurrently. He however submitted that, whether a sentence should run concurrently or consecutively, would mainly depend upon the nature of offence committed and the facts and circumstances of each case.

4.5. The learned APP Mr. Amit Chutke has also pointed out that, the corresponding provision to section 31 of Cr.P.C. is incorporated as section 25 under the Bharatiya Nagarik Suraksha Sanhita, 2023 with modification which empowers the court to impose such punishments to run concurrently or consecutively considering the gravity of offence.

[5] Heard the respective counsel for the parties at length and perused the record.

[6] The short question that arises for consideration is whether this Court, after its judgment dated 07.01.2019 has been affirmed by the Hon'ble Supreme Court, can exercise jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to modify or alter the said judgment so as to direct that the sentences shall run concurrently. Before advertng to the jurisprudence relating to Section 31 of the Code of Criminal Procedure, this Court considers it appropriate to summarise the issues that have been raised by the applicant for determination, namely-

a) Whether this Court, by way of an independent application, can issue any direction with respect to the mode or manner of execution of sentence after the judgment has attained finality?

b) Whether such a direction can be issued by invoking the inherent powers of this Court?

[7] Before proceeding to deal with the issue involved in the matter the facts of the case is that, on 08.12.2004 around 09:00 p.m., when the prosecutrix was escaping out alongwith her two small children from the backside of her hut, the accused caught her by her hair in the courtyard and threatened her with broken bottle and dragged her to a secluded place where they committed forcible sexual intercourse with her. Further, when accused no.1 had sexually ravished her, her children were in the custody of the accused no.2 (applicant) at a few distance away as hostages and after satisfying his lust, when the accused no.1 come back, the accused no.2 (applicant) had went and sexually ravished her and at that time, her children were in the custody of the accused no.1. Further, after the incident, she was threatened to not to disclose the incident to anybody otherwise the accused would kill her husband and children and destroy her hut.

One can imagine the mental trauma and agony faced by the prosecutrix after the alleged incident and looking to the manner in which the alleged heinous offence was committed, the leaned trial court must have refrained itself from exercising discretion in favour of the accused by not mentioning concurrent running of the substantive

sentences. Already the discretion has been exercised along judicial lines by the learned trial court keeping in view the manner of offence and its gravity.

[8] This court would like first to reproduce Section 31 and Section 427 of Criminal Procedure Code (hereinafter referred to as Cr.P.C.) as under:

31. Sentence in cases of conviction of several offences at one trial.-(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that-

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.

427. Sentence on offender already sentenced for another offence.-(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

Section 31 of the Code of Criminal Procedure, 1973 is a pivotal provision that governs the mode of sentencing when an accused is convicted of two or more offences at one trial. The section, while conferring wide discretion upon the sentencing court, does not lay down specific guidelines as to the circumstances in which sentences

should run concurrently or consecutively. The language of the provision makes it clear that the direction for sentences to run concurrently or consecutively pertains to the method of execution of the sentence and does not alter the nature or quantum of punishment. The legislative intent underlying Section 31 is to empower courts to impose multiple punishments in appropriate cases while ensuring that aggregate punishment remains proportionate and not excessive.

[9] Under Section 31(1), CrPC, when a person is convicted of two or more offences at one trial, the sentencing court, subject to Section 71 of the Indian Penal Code, 1860 ("IPC"), is competent to award separate punishments for each offence. In the absence of any specific direction, such sentences shall run consecutively. Section 31(2) further clarifies that even where consecutive sentences are imposed, the aggregate punishment shall not exceed fourteen years, nor shall it exceed twice the amount of punishment the court is competent to inflict for a single offence.

[10] It is the option of the trial court that passes a different sentence on the accused at trial to order for concurrently, i.e. the lesser punishment should be merged with the greater punishment. When in a trial, several offences are ordered by the court and the court has not directed the method of sentencing, then the sentences shall run one after another as directed by the court. In **O.M. Cherian alias Thankachan v. State of Kerala and Others**, 2015 2 SCC 501, the Hon'ble Supreme Court has observed in paragraph 20 as under:

"20. Under Section 31 CrPC it is left to the full discretion of the court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically."

[11] However, this court found substance in the argument of the learned APP Mr. Amit Chutke that, whether a sentence should run concurrently or consecutively, would mainly depend upon the nature of offence committed and the facts and circumstances of each case. The record reveals that the accused had committed heinous crime by committing gang rape upon a married lady and by threatening and holding her small children as hostages in their custody. Therefore, the trial court has not exercised its jurisdiction contemplated under section 31 of Cr.P.C. in his favour. Even the appellate court found the accused guilty of those offences and the conviction is maintained till Apex Court.

[12] This court further finds that in the present case, the applicant is convicted U/s. 376(g) of IPC and sentenced to suffer RI for 10 years and he is also convicted U/s.

506 r/w 34 of IPC and sentenced to suffer RI for 1 year. As such, the applicant is convicted for two offences in a single trial and therefore, as has been rightly pointed out by learned APP Mr. Amit Chutke, Section 427 of Cr.P.C. has no application, since he was not convicted and sentenced to punishment in different trials.

[13] The applicant was convicted by the learned Trial Court on 01.11.2006 and thereafter, his Appeal was dismissed on 07.01.2019 on merits and lastly, the SLP filed by applicant was dismissed. Thus, the conviction of the applicant has attended finality. The Criminal Writ Petition No. 234/2025 for premature release of the applicant was dismissed on 23.07.2025.

[14] In the judgment relied by the learned counsel for applicant Shri. S.D. Chande in the case of **Shersingh -versus- State of M.P.**, 1989 CrLJ 632 (Supra), the applicant therein who was undergoing sentences in two different cases has invoked the inherent powers of the MP High Court under section 482 of Cr.P.C. for requesting the sentences passed in those two cases against him to run concurrently. This court is not disputing the ratio of law laid down in that judgment that, by virtue of its inherent powers under Section 482 of Cr.P.C., the Hon'ble High Court can order to run the sentences concurrently even if the trial court or the appellate or revisional court has not exercised its discretion under Section 427 of Cr.P.C. and even though, the conviction has become final. However, significantly, it was not an application for speaking to the minutes and therefore, is of no help to the applicant to support his contention that, this court has jurisdiction to deal with the same in an application for speaking to the minutes.

[15] Even in the case of **Satnam Singh Puransing Gill -versus State of Maharashtra**, 2009 AllMR(Cri) 1351 (2009 SCC Online Bom 52) relied by the learned counsel for applicant Shri. S.D. Chande to buttress his submission that, an obligation is casted upon the courts under Section 427 of Cr.P.C. to provide the benefit to the convict by directing the sentences to run concurrently. This court is not disputing propositions of law set out in that judgment. However, the Hon'ble Apex Court in the said judgment has itself left the question of jurisdiction, maintainability to be decided by the learned single judge in accordance with law. Even in this case also, it was not directed to pass such orders while dealing with applications for speaking to the minutes.

[16] The learned counsel for applicant/ appellant argued that this court has the inherent power to direct the method of sentencing if the trial court has failed to expressly mention it in the judgment, and the High Court has the power to rectify this error of law under the inherent power of the court. As far as this argument of the appellant is concerned, this court finds the argument partially correct. The appellant court has the power to rectify this error, as was held in the case of **Sunil Kumar v. State of U.P.**, 2021 5 SCC 560. In para12, the court observed that it is the High Court's duty to correct the error and direct the method of sentencing the relevant para is reproduced below-

"12. As noticed, if the court of first instance does not specify the concurrent running of sentences, the inference, primarily, is that the court intended such sentences to run consecutively, though, as aforesaid, the court of first instance ought not to leave this matter for deduction at the later stage. Moreover, if the court of first instance is intending consecutive running of sentences, there is yet another obligation on it to state the order (i.e. the sequence) in which they are to be executed. The disturbing part of the matter herein is that not only the trial court omitted to state the requisite specifications, even the High Court missed out such flaws in the order of the trial court".

[17] However, in the present case, it should be noted that this error has not been brought before this court as a ground of appeal. In the present case, the appellant has already exhausted all the remedies by appealing to the Supreme Court. The question of the method of sentencing was not raised by the appellant for a reasonable time. Now the appellant is stating that the court should independently place an order for declaring the sentencing method to run consecutively. This plea has not been raised before the original appellate court nor the Honourable Supreme Court. There was no reasonable explanation as to why there was so much delay in raising this plea.

[18] In the present case, the conviction and sentence recorded by the learned Trial Court were challenged before this Court and thereafter before the Hon'ble Supreme Court. Both Courts upheld the conviction and sentence in toto. At no point during the proceedings was any argument advanced that the sentences should have been directed to run concurrently.

[19] In **Akhil Bharvarshiya Marwari Agarwal Jatiya Kosh and others v. Brijlal Tribrewal and others**, 2019 2 SCC 684, the Court held that any order which seeks to alter substantive rights or introduces new directions amounts to a review or modification and, therefore, falls outside the scope of a mere correction note. It is further noted that no appeal or cross-objection has been filed by the plaintiff; accordingly, the High Court cannot grant the relief sought in the absence of such appellate or crossobjection jurisdiction. It is also clarified that the jurisdiction and scope of civil and criminal courts are substantially different. The ratio decidendi of a civil case cannot be mechanically applied to a criminal proceeding. However, the Court does not dispute the principle that an application seeking correction of clerical or arithmetical errors in the proceedings may be entertained. Nevertheless, such an application cannot be equated with an application for review, which involves a substantive reconsideration of the order.

[20] It is a well-settled principle of criminal jurisprudence that once a judgment of conviction and sentence attains finality, having been affirmed by the appellate and the apex courts, the same cannot be reopened or modified by way of any subsequent application. The Hon'ble Supreme Court, in Criminal Appeal Nos. 1153-1155 of 2021, has reiterated that under Section 362 of the Code of Criminal Procedure (analogous to Section 473 of BNSS, 2023), no Court has the power to alter or review its judgment, except to correct a clerical or arithmetical error. The Hon'ble Supreme Court in

Criminal Appeal Nos. 1153-55 of 2021 has held that under section 362 of CRPC it is not permissible for any court to alter or review its earlier judgment except to correct a clerical or arithmetical error. The Hon'ble Apex Court in paragraphs 9 and 10 has held thus:

9. For appreciating the issue, it will be relevant to refer to Section 362 of Cr.P.C., which reads thus:

"362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

10. It can thus be seen that, under Section 362 of Cr.P.C., once the judgment and final order is signed disposing of a case, no Court is allowed to alter or review the same except to correct a clerical or arithmetical error. No doubt that the High Court while delivering the impugned judgment has said that it was only correcting a clerical error. However, for testing the correctness of the said finding, it will be pertinent to refer to certain paragraphs of both the judgments of the High Court.

[21] It is further held by the Supreme Court in the case of Vikram Bakshi and Ors. v. R.P. Khosla and Anr., 2025 LiveLaw(SC) 844 - That once a judgment reaches its finality, i.e. the judgment is signed and pronounced criminal court cannot change or review its own judgment. The court further held that criminal courts become functus officio once a judgment is signed and can only correct clerical or arithmetical errors or act in rare situations such as fraud, lack of jurisdiction or denial of hearing. The relevant para is reproduced below-

"34. A careful consideration of the statutory provisions and the aforesaid decisions of this Court clarify the now-wellsettled position of jurisprudence of Section 362 of CrPC which when summarize would be that the criminal courts, as envisaged under the CrPC, are barred from altering or review their own judgments except for the exceptions which are explicitly provided by the statute, namely, correction of a clerical or an arithmetical error that might have been committed or the said power is provided under any other law for the time being in force. As the courts become functus officio the very moment a judgment or an order is signed, the bar of Section 362 CrPC becomes applicable, this, despite the powers provided under Section 482 CrPC which, this veil cannot allow the courts to step beyond or circumvent an explicit bar. It also stands clarified that it is only in situations wherein an application for recall of an order or judgment seeking a "procedural review" that the bar would not apply and not a substantive review" where the bar as contained in Section 362 CrPC is attracted. Numerous decisions of this Court have also elaborated that the bar under said provision is to be applied *stricto sensu*".

[22] Therefore, as far as the first issue is concerned, this court does not have jurisdiction to provide such direction in an independent order. Since the matter has

reached finality, this court cannot give such direction. The appellant has pleaded to make such a direction under the inherent power of the court under section 482 of the CrPC (528 BNSS). Inherent powers of the court are such powers which is used to do complete justice. Such powers are in the intrinsic in a superior court; it is its very life-blood, its very essence, its immanent attribute. It is the power of the High Court that restrains a higher court from merely performing as a formal organ. However, it should be noted that the inherent powers should be used with caution. It should not become a tool by which provisions of law are overridden in the name of complete justice. In the present case, the judgment has reached in its finality and the appellant has exhausted all their remedies. In this situation, section 362 provides that once the judgment is signed and sealed, it cannot be changed or reviewed by the court. In the presence of express provision, the inherent powers cannot be used to override the law.

[23] The question as to whether sentences are to run concurrently or consecutively is a matter to be decided at the stage of sentencing itself, after hearing the convict on that aspect as contemplated under Section 235(2) CrPC. Once the judgment and order of conviction have attained finality, the same cannot be revisited under the guise of a "speaking to minutes" application.

[24] It is an admitted position that the applicant never raised the plea of concurrent running of sentences at any stage from the trial proceedings till the dismissal of the appeal by the Hon'ble Supreme Court. The present attempt to seek modification of the operative portion of the judgment is, therefore, wholly misconceived and devoid of merit.

[25] Having bestowed my thoughtful consideration to the submissions advanced and the legal position settled by the Hon'ble Supreme Court, I find no merit in the present application. The same deserves to be rejected.

ORDER

(i) The Criminal Application for Speaking to Minutes read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, stands **rejected**.

(ii) No order as to costs.

At the conclusion, the Court places on record its appreciation for the valuable assistance rendered by the learned counsel for the applicant, Shri S.D. Chande, as well as by the learned Additional Public Prosecutor, Mr. Amit Chutke
