

MHCC020061292026



IN THE COURT OF SPECIAL JUDGE,
(CONSTITUTED UNDER THE PREVENTION OF CORRUPTION ACT, 1988)
FOR GREATER BOMBAY AT MUMBAI

ORDER BELOW EXH. 1
IN
SPECIAL CASE NO. 980/2026

The State of Maharashtra
(ACB, Mumbai)

...Complainant

Versus

1. Kishor Hari Naik
2. Smt. Aryashree Kishor Naik

...Accused no.1 & 2

Mr. Siroya, APP for State/Complainant.
Mr. Desai, Adv. for accused.

CORAM : H.H. THE SPECIAL JUDGE (ACB)
SHAYANA PATIL (Court Room No.46)
DATE : 13th August, 2026.

ORDER

Matter is pending for order as to cognizance. Perused the record.

2. It is C. R. No. 52/2016 registered against the accused Kishor Hari Naik and his wife Smt. Aryashree Kishor Naik for offence u/sec. 13(1)(e) r/w 13(2) of PC Act and Sec.109 of IPC. Initially, the charge-sheet was presented vide ACB Spl. Case no. 2152/2023.

However, by order dated 20.02.2025 passed below Exh.7, both the accused were discharged and as such the matter was disposed off. Thereafter the prosecution has obtained the sanction dated 18.12.2025 granted by the Additional Municipal Commissioner, Mumbai suburb, Mumbai for prosecution of accused no.1 - Kishor Hari Naik u/sec. 19(1) of the PC Act. Thus, charge-sheet came to be presented again on 08.06.2026 against both the accused for offence u/sec. 13(1)(e) r/w 13(2) of PC Act and sec. 109 of IPC in same C R No. 52/2016. As such it is charge-sheet filed afresh against both the accused with the same investigation papers alongwith additional material of the sanction order dated 18.12.2025.

3. Under such circumstances, Ld. Counsel for accused no.2 has contested the cognizance aspect as against accused no.2 on the ground that she has already been discharged by this Court whereas any fresh material or evidence is not collected against her after the discharge and that the order of discharge is not challenged before higher court. It is also submitted on behalf of accused no.2 that present charge-sheet against her amounts to double-jeopardy against the accused.

4. Since it is a pre-cognizance stage, though hearing of accused is not provided for, the objections raised are in nature of question of law on the point of subsequent prosecution of parties and thereby it is entertained. The objection raised is about the factors for consideration for purpose of cognizance and necessity to ascertain whether the cognizance can be taken against both the accused lawfully in such second charge sheet in same crime.

5. It is the offence of dis-proportionate assets' acquisition by the accused. The charge-sheet comprises of investigation papers

including the complaint dated 29.09.2016 and the statements of witnesses recorded thereafter u/sec. 161 of Cr.PC during the investigation, the documents collected on the point of income and expenditure, bank statements and other documentary material on the point of the allegation that there is dis-proportionate acquisition by the accused Kishor Nike and his wife. Entire such investigation material as comprised in present charge-sheet is the material collected at the time of presentation of earlier charge-sheet vide ACB Spl. Case 2152/2023.

6. Said ACB Spl. case 2152/2023 was disposed off by order dated 20.02.2025 by reason of discharging both the accused. It is apparent from the contents of said order that accused no.1 was discharged due to absence of mandatory sanction for prosecution and accused no.2 was discharged as there was no prima-facie evidence of abetment. Such finding is recorded in para 6 on page no. 27 of said order. The reason for discharge of accused no.1- Kishor Nike is specific as” absence of sanction for purpose of prosecution for offences u/sec. 13(1) (e) and 13(2) of PC Act” whereas the reason for discharge for accused no.2 Aryashree Naik shows that it was a discharge for the offence of abetment punishable u/sec. 109 of IPC “for want of prima-facie evidence”.

7. It can be seen from the present subsequent charge-sheet that the only additional evidence collected by the prosecution is the sanction u/sec. 19(1) of PC Act granted by Additional Commissioner (Western Suburbs) of BMC and it is the Sanction order for prosecution of accused no.1 Kishor Hari Naik.

8. The present charge-sheet admittedly does not consist of any additional material collected in respect of role of accused no.2 whereas it is already decided that the available evidence does not make

out any prima-facie case of abetment against the accused no.2. Admittedly, the charge-sheet came to be presented with the same investigation material alongwith the sanction order for prosecution against accused no.1 as the only additional material. Such sanction is certainly the additional evidence against the accused no.1 only.

9. It can be seen from the order dated 20.02.2025 passed on Exh.7 (discharge application) in ACB case No. 2152/2023 in respect of same crime that such accused no.1 was discharged on the ground of absence of mandatory sanction for the prosecution. Said order dated 20.02.2025 also specified in clause 3 of the operative order that the prosecution was at liberty to seek fresh sanction and reinitiate proceedings as per law. Thus, it is apparent that the prosecution has sought the sanction and received the sanction order u/sec.19(1) of PC Act and presented this charge-sheet. It can be observed that though the accused no.1 was discharged earlier, it was on ground of absence of sanction whereas the prosecution has now obtained the sanction and on basis of the investigation material and such sanction, the prosecution has made out reasonable ground to believe that the offence is committed by accused no.1.

10. Now it would be necessary to consider the charge-sheet as presented to ascertain whether it reveals commission of any offence by the accused no.2. Accused no.2 is prosecuted for the offence of abetment punishable u/sec. 109 of IPC. The prosecution has not collected any further material on the point of commission of abetment by accused no.2. On the other hand, said order dated 20.02.2025 reveals that it was the discharge application by both the accused and the grounds of discharge of accused no.2 as claimed by the defence was that of absence of material evidence showing that accused no.2 has received any funds from accused no.1 or that her assets are funded by

alleged corrupt proceeds of accused no.1 as well as the ground of independent source of income of accused no.2 as she was employed as a teacher since prior to her marriage. It was also claimed that any evidence of instigation or aid by accused no.2 is not comprised in the charge-sheet. As against such grounds agitated by the accused therein, My Ld. predecessor has recorded his findings on page no.27 in clause 2 that the prosecution has failed to establish any direct role of accused no.2 in the alleged offence. It is also observed further that the charge u/sec 109 of IPC is unsustainable and accused no.2 must be discharged. The observations by the Hon'ble Supreme Court in the case of K. Karunakaran vs. State of Kerala (2007) 1 SCC 59 that "mere possession of assets does not constitute abetment" are relied upon while arriving at such conclusion. The clause 6 titled as "conclusion and final order" reveals a sub-clause of said operative part which specifies that "the accused no.2 is discharged u/sec. 109 of IPC as there is no prima-facie evidence of abetment".

11. Such order dated 20.02.2025 is in respect of same crime and same accused. Admittedly, the order results in discharge of accused no.2 whereas the same has not been challenged by the prosecution. As such the order and its conclusion are final as against accused no.2. The liberty to seek fresh sanction as per clause 3 of operative part of said order was apparently in respect of accused no.1 only.

12. As such, it needs to be observed that the accused no.2 has already been discharged whereas there is no further additional evidence or any material or any circumstance brought on record in this subsequent charge-sheet against such accused no.2.

13. The prosecution has argued that since it was an offence of abetment to accused no.1 in acquisition of disproportionate assets, the

prosecution against accused no.2 would also revive once the accused no.1 is sought to be prosecuted with proper sanction. However, it needs to be observed that the earlier order dated 20.02.2025 is apparently an order by which the court has considered the ground of discharge agitated by the accused that is "lack of evidence against accused no.2 (abetment) by reason of having no direct link of financial transactions and fact of independent source of income of accused no.2". Even the clause 5 titled as "Courts observation and findings" also revealed the finding at clause 2 that prosecution has failed to establish any direct role of accused no.2 and that the charge u/sec. 109 of IPC is unsustainable by considering that mere possession of assets does not constitute abetment. As such, it is apparent that the order of discharge of accused no.2 is passed by considering the merits of case against her. It is most pertinent to observe that said discharge order does not reveal any finding that the accused no.2 was being discharged on the ground of discharge of the main accused for want of sanction for prosecution against him. As such, it is apparent that the evidence or material collected by prosecution in such earlier charge-sheet was considered and it was found that it is not sufficient to make out any offence of abetment by accused no.2 and thereby she was discharged.

14. As admittedly, such judicial order of discharge of accused no.2 was not challenged, it has become final. The prosecution has not presented any additional material on the point of alleged abetment by accused no.2. Under such circumstances, though the accused no.1 is prosecuted on the basis of same material alongwith fresh compliance of sanction order, there is nothing to believe reasonably that after the discharge of accused no.2 by earlier order dt 20.02.2025, which has become final, any offence of abetment by accused no.2 is made out by reason of collection of any further evidence. Hence, under such

circumstances, cognizance of any offence u/sec. 109 of IPC cannot be taken against accused no.2. Hence, the order is as follows :

ORDER

1. The cognizance of offence punishable u/sec. 13(1)(e) r/w 13 (2) of PC Act is hereby taken as against accused no.1.
2. Any case for cognizance of offence u/sec. 109 of IPC as against accused no.2 is not made out.
3. Issue process in form of summons to accused no.1 for his appearance on next date.

Date : 13.08.2026



(Shayana Patil)
Special Judge under P.C. Act
City Civil and Sessions Court, Mumbai

Dictated on : 13.08.2026
Transcribed on : 14.08.2026
HHJ signed on : 14.08.2026

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

14.08.2026 at 03.40 p.m.

(Mrs. S. W. Tuscano)

UPLOAD DATE AND TIME

NAME OF STENOGRAPHER

Name of the Judge (With Court room no.)	Smt. Shayana Patil (C.R. No.46)
Date of Pronouncement of JUDGMENT/ ORDER	13.08.2026
JUDGMENT/ORDER signed by P.O. on	14.08.2026
JUDGMENT/ORDER uploaded on	14.08.2026