

ORDER(Dated 17th January 2022)

Present criminal revision is preferred against the order dated 28.08.2019, passed by Ld. JMFC, Baramati, thereby rejecting a prayer to forward a complaint for investigation vide Sec. 156(3) of the Cr.P.C. My Ld. Predecessor passed the order dated 10.03.2021 “*prior to issuance of process, no need to hear the accused, hence, A.P.P. to say*”. However, the Hon'ble Supreme Court in case of **Subhash Sahebrao Deshmukh Vs. Satish Atmaram Talekar and Ors. reported in (2020) 6 SCC 625**, held in para Nos. 9 and 10 that:-

09 “The restoration of the complaint by the Additional Sessions Judge was undoubtedly to the prejudice of the appellant. The right of the appellant to be heard at this stage need not detain us any further in view of Manharibhai (supra) observing as follows:

“53. We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section. 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality

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

10 *The impugned orders dated 6.03.2009 and 08.10.2007 are held to be unsustainable in their present form. They are therefore set aside. The matter is remanded to the Additional Sessions Judge, Greater Mumbai to hear the revision application afresh after notice to the appellant also and then pass a fresh reasoned and speaking order to his satisfaction. The appeal is allowed.*

Hon'ble Allahabad High Court in case of **Atul Pande @ Param Pragdyan Vs. State of U.P. and others**, held that, “a

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prospective accused is entitled to be heard in revision U/s. 397 of Cr.P.C. when an order rejecting an application U/s.156(3) of Cr.P.C. is assailed”.

02 Thus, in view of the law laid down by the Hon'ble Apex Court and Hon'ble Allahabad high Court, is it imperative to hear the accused in revision against an order rejecting an application U/s.156 (3) of the Cr.P.C. Though the Ld. Predecessor passed the order but that order was in respect of pre - issuance of process and not in respect of revision, therefore, it is just and necessary to hear the accused/respondent Nos. 1 to 15. Hence, the order:-

ORDER

Issue notice to respondent Nos.1 to 15.

Date: 17.01.2022

(J.A. Shaikh)
Addl. Sessions Judge. Baramati.