



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Crl. Pet. No. 761/2025

3. Rajinder Sharma,
Aged about 64 years, E 1/40,
Ashoke Vihar, Phase II, New Delhi,
110052.

-Versus-

3. CID, Assam,
Through the Deputy Superintendent of Police,

CID Assam, Ulubari, Guwhati.

4. Pavneet Gulati aged about 39 years,
R/o House No. 330, Block E, Ranjit Avenue,
Amritsar, Punjab – 143 001.

For the petitioner : Mr. A. K. Bhuyan, Advocate.

For the Respondents : Mr. K.N. Choudhury, Sr. Adv,
Mr. Das, Adv.

Date of hearing : 17.09.2025.

Date of judgment : **26.09.2025.**

-BEFORE-

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

JUDGMENT & ORDER (CAV)

Heard Mr. A. K. Bhuyan, learned counsel for the accused petitioner. Also heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. Das for the respondents.

2. This is a application filed by the applicants namely, (i) **Kamal Sabharwal** (ii) **Mohit Kalra** iii) **Rajinder Sharma** seeking for their impleadment in the connected Crl. Pet. No. 761/2025.

3. It is stated in the instant application inter alia that the applicant No.1 is the informant of the CID PS Case No.16/2023 u/s 120(B)/255/256/257/259/260/406/417/419/420/463/466/468/471/472/474/506 IPC r/w Section 7(1)/7(2) State Emblem of India (Prohibition of Improper Use) Act, 2005. The aforesaid FIR was lodged against Shri Khusdeep Bansal, Shri Partha Bharadwaj, Shri Shashwat Singh Bundela, Shri Harish Bansal, Shri Dilip

Singh Baghel, Smt. Pallvi Thakuria and others.

4. That after completion of investigation of the aforesaid FIR, the investigating authority submitted charge sheet being Charge Sheet No.02/2024, Charge Sheet No. 02A/2024 and Charge Sheet No.02B/2024 respectively against the aforesaid accused persons and presently the case is pending and was registered as Sessions Case No.93/2024 in the Court of Additional District and Session Judge No.5, Kamrup(M) at Guwahati for pending trial.

5. That during pendency of the Case before the Additional District and Session Judge No.5, Kamrup(M) at Guwahati, the petitioner of the instant case approached the Hon'ble CJM, Kamrup(M) at Guwahati under Section 173(4) of the BNSS, 2023 vide a petition dated 15.05.2025 wherein the applicants were made party praying for calling a report and to direct the CID to register an FIR. The aforesaid application was registered as Complaint Case No.204/2025.

6. Subsequently, the petition dated 15.05.2025 came to be dismissed by the learned CJM, vide Order dated 06.06.2025.

7. It is against this order that the petitioners of the connected criminal revision petition had approached this Court albeit without making the applicants of the instant I.A as party respondents.

8. I have heard Mr. A.K. Bhuyan, learned counsel appearing for the applicants and Mr. K.N. Choudhury, learned Senior Counsel appearing for the respondents (in the IA).

9. Affidavit-in-opposition has also been submitted on behalf of the respondents in the I.A against the instant application for impleadment.

10. Mr. Bhuyan, learned counsel for the applicants submits inter alia that the present applicants were parties to the application which was filed by the present respondents of the I.A, as is evident from the Annexure-C of the petition, which came to be dismissed by the impugned order but surprisingly, while approaching this Court by way of the connected Crl. Pet. No. 761/2025, the petitioners therein had purposefully omitted to implead the present applicants as party respondents, in order to enable them to obtain the desired relief behind the back of the present applicants.

11. It is further submitted that the present applicants, who are prospective accused in the FIR, sought to be registered by the present respondents/petitioners in the criminal petition and they therefore have a right to be heard before this forum in the connected criminal petition.

12. In support of his submissions, learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in ***Santhakumari & Others Vs. State of Tamil Nadu & Another*** reported in ***2023 LiveLaw (SC) 465***, wherein the decision of a three Judge of a Supreme Court in ***Manharbhai Muljibhai Kapadia & Another Vs. Saileshbhai Mohanbhai Patel & Others*** reported in ***(2012) 10 SCC 517*** has been quoted with approval. In the said judgment, it was held as follows:-

“48..... by virtue of Section 401(2) of the Code, the suspects get right of hearing before Revisional Court although such order was passed without their participation.

The right given to "accused" or "the other person" under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage."

13. The aforesaid decision in ***Manharbhai Muljibhai Kapadia & Another(supra)*** has also been followed in ***Bal Manohar Jalan Vs. Sunil Paswan, (2014) 9 SCC 640***, wherein it was held at paragraph 9 as follows:

"9. In the present case challenge is laid to the order dated 4-3-2009 at the instance of the complainant in the revision petition before the High Court and by virtue of Section 401(2) of the Code, the accused mentioned in the first information report get the right of hearing before the Revisional Court although the impugned order therein was passed without their participation. The appellant who is an accused person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code and on this ground, the impugned order of the High Court is liable to be set aside and the matter has to be remitted."

14. Mr. K. N .Choudhury, learned Senior Counsel, in the course of his arguments opposing the prayer for impleadment relied on the decision of the Hon'ble Supreme Court in ***State of Rajasthan vs. Surendra Singh Rathore***, reported in ***2025 SCC OnLine SC 358***, wherein at para 8.4, it was held as follows:-

8".4 In Babubhai (supra), it was observed that:

"21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same Incident in respect of the same occurrence or are in regard to the Incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different Incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, Investigation on both the FIRs has to be conducted."

15. Further, at paragraph 10 of the above said judgment, it was held as follows:-

"10. As recorded supra, the High Court found that the two FIRs were indeed in regard to the same offence and, therefore, not maintainable, however, in our view the scope of the two FIRs, as already referred to in para 3 supra, are distinct. The FIR prior in point of time refers to a particular incident and the action taken therein is limited. The second FIR pertains to the larger issue of widespread corruption in the concerned department and, therefore, is much larger in its scope than the previous FIR."

16. The aforesaid decision cited by learned Senior Counsel pertains to the maintainability of a second FIR, which may perhaps with the subject matter of the main criminal petition, but I do not find much relevance in the same for the purpose of deciding the present IA and in any case, the said decision is not in conflict with the decision cited by learned counsel for the applicants.

17. Although a detailed affidavit-in-opposition has been filed on behalf of the respondents in I.A, it is nowhere explicitly explained as to why despite the

present applicants having been made parties in the proceedings before the learned CJM, the decision in which is under challenge in the connected criminal petition, the said entities are not made parties in the criminal petition or as to what prejudice would be caused to the petitioners in the criminal petition by impleading them as party respondents.

18. In any case, in view of the clear principle of law laid down in ***Manharbhai Muljibhai Kapadia & Another (supra)***, there is no escape from the conclusion that the present applicants in the I.A have a right to be impleaded in the connected criminal petition.

19. Consequently, the I.A stands allowed. The applicants namely (i) **Kamal Sabharwal** (ii) **Mohit Kalra** iii) **Rajinder Sharma** are hereby impleaded as a respondent Nos. 4, 5 & 6 respectively in CrI. Pet. No. 761/2025.

20. I.A stands allowed.

21. Necessary corrections be made in the cause title of CrI. Pet. No. 761/2025.

22. In view of the order passed in the connected IA (CrI) No. 839/2025, list the matter for admission on **22.10.2025**.

JUDGE

Comparing Assistant