

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 4250 of 2018****MITESHBHAI KANCHANBHAI PARMAR****Versus****STATE OF GUJARAT****Appearance:**

**MR P P MAJMUDAR(5284) for the PETITIONER(s) No. 1,2,3,4
for the RESPONDENT(s) No. 2
MR HARDIK SONI, APP for the RESPONDENT(s) No. 1**

CORAM: HONOURABLE MR.JUSTICE B.N. KARIA**Date : 21/05/2018****ORAL ORDER**

1. **Rule**, returnable on **19th June, 2018**. Learned APP Mr.Hardik Soni waives service of notice of Rule on behalf of the Respondent No.1-State.
2. Heard Mr.P.P.Majmudar, learned Advocate for the petitioners and Mr.Hardik Soni learned APP for the Respondent-State.
3. It is submitted that one private complaint was filed by the respondent No.2 on 15.10.2016 before the learned Chief Judicial Magistrate, Court, Ankleshwar against the present petitioners under sections 302, 498A, 166, 201 and 114 of the Indian Penal Code. Learned 2nd Additional Chief Judicial Magistrate, Ankleshwar in Criminal Inquiry No.58/2016 was pleased to dismiss the complaint made by the respondent

no.2. Against the order passed by the 2nd Additional Chief Judicial Magistrate, Ankleshwar a Criminal Revision Application No.12/2018 was preferred by the original complaint, wherein learned 3rd Additional Sessions Judge, Ankleshwar vide order dated 05.05.2018 was pleased to allow the Revision Application without hearing the present petitioners, which is contrary to the principles of natural justice and is contrary to section 401(2) read with 399 (2) of the Code of Criminal Procedure.

4. It is further submitted that they were not arraigned as accused nor an opportunity of hearing was given to the present petitioners. In support of this, learned Advocate Mr.Majmudar has placed reliance on a judgment delivered by the Hon'ble Apex Court in Criminal Appeal No.1577 of 2012 in the case of **Manharbhai Muljibhai Kakadia and Anr. Vs. Shaileshbhai Mohanbhai Patel and Ors.** The Hon'ble Apex Court in para No.58 has observed 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 crime is entitled to hearing by the revisional court. In other words, where

complaint has been dismissed by the Magistrate under section 203 of the Code, upon challenge to the legality 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. Admittedly, the present petitioners were not the accused before the learned 3rd Additional Sessions Judge, Ankleshwar in Criminal Revision Application No.12 of 2018, nor they were given an opportunity of hearing.

5. Under the circumstances, the ad-interim relief as prayed for in Para No.14 (B) stands granted till then.

Direct service is permitted.

(B.N. KARIA, J)

TUVAR