

Ajit Pathrikar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 754 OF 2025

WITH

CRIMINAL APPEAL NO. 985 OF 2025

WITH

CRIMINAL APPEAL NO. 988 OF 2025

WITH

CRIMINAL APPEAL NO. 986 OF 2025

WITH

CRIMINAL APPEAL NO. 987 OF 2025

WITH

CRIMINAL APPEAL NO. 1007 OF 2025

WITH

CRIMINAL APPEAL NO. 1047 OF 2025

Jagannath Prasad Shoke

Age-70 years running, Occp-
Railway Service, Senior Section Enginner
(Works) Central Railway @ Kalyan
Res- Room No. 504 B, OM Heights
C.H. Society, near Kashish Park
Godrage Hill, Kharakpada
District – Thane – Kalyan (West) 421301.

...Appellant

Versus

State Of Maharashtra

Through-Governor State of Maharashtra

& Mahatma Fule Chowk Police Station

Kalyan (West) 421301.

...Respondent No.1

Shri P. P. Muley

Special Judge appointed under Section

14(1) of SC/ST POA Act

Addl. District & Session Court

Kalyan (West) 421301.

...Respondent No.2

Mr. K. J. Dhoke, *for the Appellant in all the matters.*

Ms. S. K. Gajare, *APP for the State-Respondent in Cr. Appeal Nos. 754, 987, 988 and 1047 of 2025.*

Mr. R. M. Pethe, *APP for the State-Respondent in Cr. Appeal Nos. 985 and 986 of 2025.*

Mr. A. S. Gawai, *APP for the State-Respondent in Cr. Appeal No. 1007 of 2025.*

CORAM R. M. JOSHI, J.

DATED: 27th JANUARY 2026

P.C.:-

1. These Appeals take exception to the order passed by Special Court under the Provisions of the SC/ST (Prevention of Atrocities) Act, 1989 (for short, "Atrocities Act"), by impleading the Judge who passed the order impugned as

Respondent No.2. Following chart would indicate the orders impugned in these Appeals:

Appeal Nos.	Date of order	Order in challenge
754 of 2025	15.07.2025	C.P./Cri. M.A. No. 76 of 2025
987 of 2025	17.05.2025	Cri. M.A. No. 46 of 2025
985 of 2025	17.05.2025	Cri. M.A. No. 46 of 2025
986 of 2025	17.05.2025	Cri. M.A. No. 46 of 2025
988 of 2025	17.05.2025	Cri. M.A. No. 46 of 2025
1007 of 2025	05.07.2025	Special Case No. 560 of 2019
1047 of 2025	19.07.2025	Cri. M.A. No. 93 of 2017

2. At this stage, this Court is not going into the merits of the Appeal and correctness or otherwise of the orders impugned. The present order is restricted to the issue as to “whether the learned Judge who passed the orders impugned can be joined as a party Respondent to the present Appeal”.

3. Essentially, the Appellant claims in these Appeals that, in view of the provisions of sub-section 2 of Section 3 of the Judges Protection Act, 1985, it is permissible to add the

Special Judge as a Respondent to the present Appeal. It is claimed that the learned Judge acted against the directions of law and refused to perform duty entrusted on Special Judge under the Atrocities Act and the Rules. It is also claimed that the Judge passed the orders impugned without hearing Complainant and his Advocate, which is contrary to the provisions of Section 15A(5) of the Atrocities Act. It is alleged that the Judge observed a practice of untouchability, which is abolished under Article 17 of the Constitution of India. With these averments, following prayers were made in the Appeal, with change in the date of impugned orders and number of proceedings, which read thus:

“(a) The Hon’ble High Court kindly be quash and set-aside the order passed by Special Court Kalyan on 17.5.2025 on Exh-1 in Cri.M.A. 46 of 2017, in the interest of justice please.

(b) Pending the hearing and final disposal of present appeal, the implementation of order dated 17.5.2025 in Cri. MA 46 of 2017 kindly be stayed in the interest of justice please.

(c) The interim relief under prayer clause (b) above kindly granted – ex-parte, being violation of principle of natural justice & law laid down by Hon’ble Apex court in Hariram Bhambhi case, uphold rights of victim to hear u/s 15A (5) of POA Act, in the interest of justice please.

(d) The Hon’ble High Court kindly be called for records and proceedings of Cri.M.A. 46 of 2017 from Special Court & DJ-5 & ASJ Kalyan u/s 15A (4) of the POA Act, in the interest of justice please.

(e) The Hon’ble High Court kindly restrains respondents No. 1 and 2 u/s 15A (8) (c) of POA Act under original jurisdiction of the court, in the facts and circumstances of the case, since respondents continuously acting against special provisions of SC/ST POA Act and PCR Act and damaging / affecting administration of justice hence necessary to prevent copying of offence, in the interest of justice please.

(f) Any other and further order as Hon’ble High Court may deem fit, proper and necessary in the facts and circumstances of the case may also be passed for complete justice please.”

4. Learned Counsel for the Appellant made oral submissions so also filed written notes under the caption “lists of points to be argued” in support of his contentions. It is his

main submission, amongst others, that, in view of the provisions of Section 3(2) of the Judge Protection Act, it is permissible for the Appellant to join the Judge who has passed the order impugned, as a Respondent. It is his contention that since the learned Judge has refused to monitor the investigation and disposed of the proceedings before him, this amounts to not following the mandate of Section 156(3) of the Cr.P.C. It is his submission that the protection under the provisions of the Judges Protection Act would not be available for Respondent No.2 and since there is non-compliance with mandatory provisions of the Act, he deserves an action as contemplated by the provisions of the Atrocities Act as well as contempt of Courts Act. It is his further submission that it was mandatory on the part of the learned Judge to hear the victim, i.e. the Appellant herein, before passing the order impugned, as the same has not been done, Appeals can be maintained against him. He placed reliance on following Judgments:

- 1) **Priti Agarwalla And Others Vs. The State Of GNCT Of Delhi And Others¹.**
- 2) **M. Subramaniam And Another Vs. S. Janaki And Another².**
- 3) **Sakiri Vasu Vs. State of U.P. And Others³.**
- 4) **K. N. Shukla Vs. Navnit Lal Manilal Bhat And Anr⁴.**
- 5) **The State of GNCT of Delhi And Others Vs. Praveen Kumar @ Prashant⁵.**

5. It is made clear, at the outset that the correctness and otherwise of the impugned orders in these Appeals are not gone into at this stage; the same shall be decided after hearing the Appellant and the necessary party Respondent. At this stage, the only question arises as to whether a Judge can be joined as a party Respondent to an Appeal.

1 Criminal Appeal No (S). 348 of 2021 of Supreme Court.
2 Criminal Appeal No. 102 of 2011 of Supreme Court
3 AIR 2008 SC 907
4 1967 AIR 1331
5 Criminal Appeal No.349 of 2021

6. It is pertinent to note that the procedural laws as well as substantial laws applicable to civil or criminal proceeding do not provide for the joining of a Judge as a party Respondent, who has passed any order, when an order passed by him/her is under challenge in an Appeal. In a Civil Appeal, the party to the original proceedings or who is likely to be affected by passing of the order can become party and not otherwise. In a Criminal Appeal, the accused, the victim and the State would only be relevant parties. Under the provisions of Atrocities Act, in view of Section 15A (5), the victim would be a necessary party to an Appeal filed under Section 14A, as the victim or his dependent shall be entitled to be heard at any proceeding under the Act. Similarly, in view of the Judgment of the Division Bench of this Court in the case of *Arjun Malage vs State of Maharashtra*⁶, the victim of an offence under the Protection of Children from Sexual Offences Act requires to be heard. Thus, except for the categories of persons mentioned above, no other persons can become party to an Appeal.

6 PIL NO.50 OF 2021

Moreover, there is absence of any provision of law, substantial or procedural, permitting the joining of the judicial officer who has passed order impugned as a party Respondent, such judicial officer cannot be joined / made as a party Respondent to an Appeal.

7. Learned counsel for the Appellant seeks to place reliance on section 3 of Judges Protection Act to argue that in the view of the said provisions, a judge can be joined as a party respondent to present Appeal. It would be relevant to take note of said provision which reads thus:

“3. Additional protection to Judges.- (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section(2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or

departmental proceedings or otherwise) against any person who is or was a Judge.”

A bare perusal of section 3(2) indicates that reliance placed upon the same by the Appellant is wholly misplaced. The said provision enables the Central Government, Supreme Court or High Court to take action by way of civil, criminal or departmental proceedings against a judge.

On the contrary, subsection (1) creates a complete embargo on court in entertaining or continuing any civil or criminal proceedings against any person, who has done any act, thing or word spoken, when acting or purporting to act in discharge of his official or judicial duty or function. Thus, even a purported act in discharge of duty or function of a judge, is exempted from civil or criminal proceedings.

8. The reference made to provision of section 4 of the Atrocities Act is also irrelevant for deciding the issue in hand. The said provision in no way would justify joining a judge as party to an Appeal challenging order passed by him.

9. Apart from the fact that there is no legal provision which supports joining/adding of the judicial officer as a party Respondent in an Appeal, it would be necessary to foresee consequences of permitting such addition. First of all, judicial officer who passes any order in exercise of his judicial powers is not required to justify the same in an Appeal. Judges are not expected to follow their orders and provide justification for passing of the same. It cannot be ignored that any order passed by the Judge is bound to be against one party or other. In such circumstances, at least one side will have grievance against the Judge. The remedy however for such aggrieved party would be to prefer an Appeal against such order before the Appellate forum and not to prosecute Judge in an Appeal. In such Appeal, on judicial side, Appellate Court is expected to see as to whether the order impugned is justified and if it is so, it can be maintained. In case order is not in accordance with law, the same can be set aside. But, in no circumstances a Judge can be called upon to justify merits of his order in Appeal.

10. Permitting joining of a judicial officer as a party Respondent to an Appeal will have serious and drastic consequences on the entire judicial system. Needless to say that if a Judge is made as a party, he will have to defend his own order before the Appellate Court. Neither State nor administration of the Court can do so on his behalf. Thus, not only the Judge would be required to spend time, money and energy in defending of his own order, but a situation will come when he will not be in a position to perform his judicial role of hearing and deciding *lis*, but would only require to defend the orders passed by him previously. This is never contemplated by the law and the judicial system. Permitting such situation to occur will lead only to chaos and nothing else. One more aspect requires consideration is that to maintain the independence of judiciary, the judges must be protected from attempts made by unscrupulous judgments, who leave no stone unturned, to secure order in favour by hook or crook. Scandalising judges and browbeating them are some of such tactics. In one of the present Appeals i.e. Appeal

No. 754 of 2025, order dated 3rd July 2025 filed by Appellant himself indicates that he had joined Respondent No.2 herein, as party in Protest Petition. The said order requires reproduction herein:

“ORDER

1. *This is a Protest Petition filed by the petitioner in 'C' summary filed on 19.09.2016 in FIR-353/2011. He has claimed the reliefs for rejection of 'C' summary, for direction for further investigation, registration of case under Section 4(2)(b) of POA Act and for further investigation, direction to register FIR, calling for recording and proceedings and for expeditious trial.*
2. *Petitioner has made the State Government of Maharashtra as accused No.1, Special Judge of Additional District and Sessions Court, Kalyan Shri. P. P. Muley as accused No.2 and Ld. Advocate Shri. M.M. Deshmukh of Kalyan as accused No.3.*
3. *The Superintendent of Additional District Court, Kalyan has submitted the objections to register the case on 02.07.2025.*
4. *Heard the petitioner at a length. Perused the Petition filed by the petitioner.*
5. *Considering the reliefs claimed by the petitioner the arraying of Special Judge of Additional District and Sessions Court, Kalyan Shri. P. P. Muley and Ld. Advocate Shri. M.M. Deshmukh of Kalyan is not warranted.*
6. *Secondly, Shri. P.P. Muley, Special Judge of District Kalyan and Advocate Shri. M.M. Deshmukh*

were not the parties to the earlier proceedings. Therefore, they are not to be made parties in this petition.

7. Thirdly, Shri. P. P. Muley, District Judge-5 and Additional Sessions Judge, Kalyan is protested under the provisions of Judge (Protection) Act, 1985. As per the provision of Section 3 of this Act, notwithstanding anything contained in any other law of the time being in force and subject to the provisions of Sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person, who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

8. It is argued by the petitioner that the protection under the Judge Protection Act, 1985 is not applicable.

9. Petitioner relied upon the case of **Baburao Dagadu Paralkar V/s. State of Maharashtra** wherein the Hon'ble Supreme Court has held that "no Judgment of a court, no order of a Minister can be allowed to stand, if it has been obtained by fraud. Fraud unravels everything."

10. As per the present case and the above referred case are altogether different. Therefore, in my opinion with due respect the above referred Judgment Baburao (Supra), is not applicable to the present case. If the petitioner is having grievance against the orders passed by any court, petitioner has every right to challenge those orders before the Hon'ble Superior Courts.

11. Considering the above said discussion, facts of the case and the reliefs claimed, I pass the following order.

ORDER

The Protest Petition be registered only against the respondent No.1 i.e. State Government of Maharashtra.”

11. Fortunately the learned Special Court refuses to approve the joining of a judge as party to the said proceedings. Thus, it can be safely said that an attempt in joining judge who passed impugned order as party respondent in these Appeals is not only aimed at pressurising him but also to caution other judges not to pass order against him or they would also face similar fate. Most importantly permitting such impleadment will take away the essence of the judicial system, wherein the judges are required to live the oath of discharging duties without fear.

12. At this stage, it would be relevant to take note of the Judgment of the Division Bench of this Court in a case of **Common Citizen of India (Common Man) And Anr. Vs. The**

Hon'ble High Court Judicature of Bombay And Ors⁷. The relevant paragraphs thereof are reproduced herein below:

“16. The attempt of the petitioners to implead the Judges of this court deserves to be strongly deprecated. A litigant cannot, even if he is appearing in person and just because he is unsuccessful in the initial round, while seeking a review of the orders passed by this court, implead the Hon'ble Judges and the Bench sitting collectively or individually as party respondents. The review petition, as is ordinarily well settled, has to be heard by the same Judge for the review goes to the Judge and appeal goes to the court. If the review has to be heard by the very same Judge, then we do not see how the petitioner can complain that the said review petition should not be heard by one of the Judges comprising the Bench or if that is heard by a distinct Bench and dismissed, he can go on impleading and arraying all the Judges as party respondents and seeking reliefs against them personally. We do not think that the petitioner's prayers in that behalf can be granted.

23. Before parting, we must once again reiterate our strong disapproval of the practice which appears to be prevailing in the Registry of the Aurangabad Bench of this court. The Registry there does not seem to think it necessary to object to the impleadment of the Hon'ble Judges comprising a Division Bench or a Judge sitting singly as party respondents to review petitions or applications in that nature.

7 W.P. No. 10972 of 2015

24. We have not been shown any rule which requires such impleadment. We, therefore, strongly recommend that hereafter, the Registrar (Judicial) shall insist upon parties/litigants and their advocates deleting the names of Hon'ble Judges as party respondents to review petitions and until such deletion, the matter should be treated as not ready or under objections. Despite opportunity being given to the litigants and their advocates to delete such names and references to the Hon'ble Judges and personal allegations against them, if the same are not deleted by carrying out appropriate amendments, the Registry shall append a note on the proceedings themselves stating clearly that parties and lawyers were asked to delete such references, but there being no compliance, the matter comes to be placed before an appropriate court for directions. That would enable the appropriate court to dismiss such proceedings only on this ground. Just as there is enough justification for discontinuance of such practice because none can insist on such impleadment, its discontinuance upholds a salutary principle. The sanctity and purity of court proceedings lies in protection to Judges and presiding officers against personal attacks by litigants lawyers on them. It is too well settled to require any reference to a judgment or a precedent that there is freedom to be critical of a judgment, but the language of such criticism must be *sobre and respectful*. The discourse of law is the discourse of civility. Even in the memo of review petitions or appeals, criticism of the judgment should not reflect any personal attack of the litigant or the draftsman on the Judge or presiding officer. None can claim a freedom to mount an attack, and that too contemptuous, on a Judge while criticising or assailing his judgment. If this much protection to the Judge is not ensured or there is no safeguard against malicious

personal allegations, no court or no Judge can function fearlessly and independently. Sometimes, a court is required to be severely critical of the conduct of parties before it. It does not demean or show any disrespect to them much less personally, but ensures that the hand of the law is strong enough, and its arm long enough to punish every guilty person howsoever high he may be and to reach injustice wherever it is found.”

The above observations though made in case of review petition, would aptly apply to the present case and issue involved herein.

13. Upshot of above discussion is that joining of a Judge, passing order impugned, as party Respondent in an Appeal is not permissible and Appeal with such party would not be maintainable.

14. Needless to say that even though it is not open for Appellant or any person to join the Judge concerned, who has passed the impugned order, as a party Respondent to the Appeal, there would be inherent power of the High Court, so also in appropriate cases, Appellate Court to seek an

explanation from the concerned Judge for passing of the order impugned.

15. The Appellant is therefore directed to delete Respondent No.2 from the array of Respondent within a period of two weeks from today.

16. Registry is directed not to register any Appeal, wherein judicial officer is made party Respondent and in any such cases, objection be raised with regard to maintainability of Appeal. This order be circulated to all Appellate Courts in State of Maharashtra, for its compliance.

17. Stand over to **20th February 2026.**

(R. M. JOSHI, J.)