

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP No. 5 of 2025 in Cr.
MMO No. 459 of 2021
Reserved on : 4.11.2025
Decided on : 25.11.2025

Jagdish Chander Sharma

...Non-Applicant/Petitioner

Versus

State of H.P. & ors.

... Non-Applicant/ Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

*Whether approved for reporting?*¹ *yes*

For the non-applicant/
petitioner

: Mr. Ankush Dass Sood, Senior
Advocate with Mr. Gaurav
Chaudhary, Advocate.

For the respondent/
non-applicant

: Mr. Varun Chandel, Addl.
A.G. for respondents No. 1 to
3/State.

For the applicant

: Mr. Vishwa Bhushan,
Advocate, for the applicant in
Cr. M.P. No. 54 of 2021

Virender Singh, Judge

By way of present application, a prayer has been made by applicant Rattan Singh to implead him, as respondent, in the present case.

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

2. According to the applicant, his wife Geeta Singh (since deceased) had filed a complaint under Section 156 (3) Cr. P.C., before the learned Special Judge (Forests), Shimla, H.P., titled as, 'Geeta Singh versus Additional Superintendent of Police, Incharge SV & ACB, Police Station, Khalini, Shimla-2, against the petitioner. The said complaint was allowed on 17.10.2015, and the State was directed to investigate the matter, within three months.

3. It is the further case of the applicant that in pursuance of aforesaid order, State, instead of conducting investigation, has submitted inquiry report, on 22.12.2015. Thereafter, learned Special Judge (Forests) has directed to conduct further inquiry/investigation.

4. The said order has been assailed by the State, as well as, petitioner Jagdish Chander Sharma. The State of H.P. has preferred Cr.MMO No. 54 of 2021, whereas, petitioner has preferred Cr. MMO No. 459 of 2022, which are pending before this Court.

5. During pendency of above petitions, Smt. Geeta Singh has expired. In this regard, applicant has relied upon her death certificate, Annexure A-1.

5. On the basis of above facts, the applicant has prayed that applicant, being legal heir of deceased Geeta Singh, be impleaded as respondent, in place of Geeta Singh. In this regard, applicant has relied upon the provisions of Section 2(wa) of the Code of Criminal Procedure Code (hereinafter referred to as 'the Cr. P.C.'), as well as 2(y) of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as 'the BNSS'). The application has duly been supported by an affidavit.

6. When, put to notice the application has been contested by the petitioner Jagdish Chander Sharma/non-applicant. As per the non-applicant, Smt. Geeta Singh (since deceased) had admittedly filed the complaint against him, however, she does not fall within the definition of 'victim', as, she has not

suffered on account of alleged act and conduct of the non-applicant/petitioner.

7. The factual position has also been denied, mainly on the ground that neither, Geeta Singh (deceased) nor the applicant falls within the definition of victim, as defined in Section 2(1)(y) of the BNSS.

8. On the basis of above facts, a prayer has been made to dismiss the application.

9. Perusal of the record shows that Geeta Singh (deceased) W/o Rattan Singh (applicant) had filed a complaint, under Section 156 Cr. P.C., with the following prayer:

“a) It is, therefore, prayed that the application may kindly be ordered to be sent to Additional Superintendent of Police SV & ACB Shimla for investigation so that the culprits are brought to books and justice may be done.”

10. The said application was allowed by the learned Special (Forests) Shimla, H.P., vide order dated 17.10.2015, while passing the following order:

“Keeping in view the law laid down by the Hon’ble High Court of H.P. in Sh. Ganesh Dutt Thakur versus Mrs.Gita Singh,Cr. MMO No. 178 of 2014, decided on 30th July, 2015, the application be sent to Additional Superintendent of Police, Incharge SV & ACB, Khalini, Shimla-2 to conduct investigation

in the matter in accordance with law, within three months from the date of receipt of the matter by the Police.”

11. In pursuance of the said direction, the inquiry report has been submitted by the then Dy. S.P. SV & ACB (SIU-1), Shimla-2.

12. Against the said report, Smt. Geeta Singh had filed the objections, and learned Special Judge (Forests), Shimla, H.P., vide order dated 12.7.2017, had passed the following order:

“13. That being so, I do not agree with the inquiry report furnished by the respondent. He is directed to further inquire into the matter in the light of the objections put forth by the applicant/ objector. She will be joined during the course of inquiry by the inquiry officer in the interest of justice and fair play. The objections are allowed in part.

14. Police file alongwith a copy of this order and copy of the objections instituted by the applicant/objector be returned to the respondent for further necessary action at his end. He is directed to conclude further inquiry/investigation in the matter as per law within a period of three months from the date of receipt of police file.”

13. The order passed by the learned Special Judge, (Forests), Shimla, has been assailed by Smt.Geeta Singh (deceased), before this Court, by

filing Cr.MMO No. 19 of 2018, which has been dismissed, by this Court, vide order dated 23.4.2019.

14. Thereafter, Geeta Singh (deceased) has assailed the same before the Hon'ble Supreme Court, by way of Special Leave Petition (Crl.) No. 31439/2019, however, the same has also been dismissed.

15. Thereafter, the learned Special Judge (Forests) Shimla, H.P., while deciding Cr. M.A. No. 9001398 of 2017, has passed the following order on 20.1.2021:

“Consequently, it is ordered that further inquiry/ investigation into allegation No. 1 be conducted by the respondent in accordance with law. The applicant-complainant be joined during the course of inquiry/investigation in the interest of justice and fair play. Police file alongwith copy of this order be returned to the respondent for further compliance of this order. Respondent is directed to conclude further inquiry/investigation in the matter in accordance with law within a period of three months from the date of receipt of police file. File of this Court be consigned to record after due completion.”

16. Against the said order, the State of H.P. has preferred Cr.MMO No. 54 of 2021, whereas, the person, who has been impleaded as

respondent/accused, in the complaint, under Section 156(3) Cr. P.C., i.e. non-applicant/petitioner Jagdish Chander Sharma has assailed the aforesaid order dated 20.1.2021, by way of present petition, which is pending adjudication, before this Court.

17. From the above facts, there is no dispute, in this case, that the complaint was filed by Smt. Geeta Singh (deceased), upon which, various orders were passed by the learned Special Judge (Forests) Shimla, H.P. Not only this, said Geeta Singh had also filed a petition, under Section 482 Cr. P.C., bearing Cr.MMO No. 19 of 2018, before this Court, against the order dated 12.7.2017, passed by the learned Special Judge (Forests), Shimla, H.P. She has, unsuccessfully, again challenged the order of dismissal of the aforesaid petition, before the Hon'ble Supreme Court and her Special Leave to Petition has also been dismissed.

18. In view of the above, the admitted position, which has emanated, in the present case, is that Geeta Singh (deceased) has filed the complaint under

Section 156 (3) Cr. P.C., before the learned Special Judge, (Forests), Shimla, H.P., which is Court of original criminal jurisdiction, as held by the Hon'ble Supreme Court, in a case titled as **"A.R. Antulay versus Ramdas Srinivas Nayak & Anr."**, reported in AIR 1984 Supreme Court 718. Relevant paragraph 27 of the judgment is reproduced, as under:

"27. It is, however, necessary to decide with precision and accuracy the position of a special Judge and the Court over which he presides styled as the Court of a special Judge because unending confusions have arisen by either assimilating him with a Magistrate or with a Sessions Court. The Prevention of Corruption Act, 1947 was enacted for more effective prevention of bribery and corruption. Years rolled by and experience gathered showed that unless a special forum for the trial of such offences as enumerated in the 1947 Act is created, the object underlying the 1947 Act would remain a distant dream. This led to the enactment of the Criminal Law Amendment Act, 1952. The Statement of objects and Reasons accompanying the Bill refers to the recommendations of the Committee chaired by Dr. Bakshi Tek Chand appointed to review the working of the Special Police Establishment and to make recommendations for improvement of laws relating to bribery and corruption. To take the cases of corruption out of the maze of cases handled by Magistrates, it was decided to set up special courts. Sec. 6 conferred power on the State Government to appoint as many special Judges as may be necessary with power to try the offences set out in clauses (a) and (b). Now if at this stage a reference is made to Sec. 6 of the Code of Criminal Procedure which provides for constitution of criminal courts, it would become clear that a new

court with a new designation was being set up and that it has to be under the administrative and judicial superintendence of the High Court. As already pointed out, there were four types of criminal courts functioning under the High Court. To this list was added the court of a special Judge. Now when a new court which is indisputably a criminal court because it was not even whispered that the Court of special Judge is not a criminal court, is set up, to make it effective and functionally oriented, it becomes necessary to prescribe its powers, procedure, status and all ancillary provisions. While setting up a court of a special Judge keeping in view the fact that the high dignitaries in public life are likely to be tried by such a court, the qualification prescribed was that the person to be appointed as special Judge has to be either a Sessions Judge, Additional Sessions Judge or Assistant Sessions Judge. These three dignitaries are above the level of a Magistrate. After prescribing the qualification, the Legislature proceeded to confer power upon a special Judge to take cognizance of offences for the trial of which a special court with exclusive jurisdiction was being set up. If a special Judge has to take cognizance of offences, ipso facto the procedure for trial of such offences has to be prescribed. Now the Code prescribes different procedures for trial of cases by different courts. Procedure for trial of a cases by different courts. Procedure for trial of a case before a Court of Sessions is set out in Chapter XVIII, trial of warrant cases by Magistrates is set out in Chapter XIX and the provisions therein included catered to both the types of cases coming before the Magistrate, namely, upon police report or otherwise than on a police report. Chapter XX prescribes the procedure for trial of summons cases by Magistrates and Chapter XXI prescribes the procedure for summary trial. Now that a new criminal court was being set up, the Legislature took the first step of providing its comparative position in the hierarchy of courts under Sec. 6 Cr. P.C. by bringing it on level more or less comparable to the Court of Sessions, but in order to avoid any confusion arising out of comparison by level, it was made explicit in Sec. 8 (1) itself that it is not a Court of Sessions because it can take cognizance of

offences without commitment as contemplated by Sec. 193 Cr. P. C. Undoubtedly in Sec. 8 (3) it was clearly laid down that subject to the provisions of sub-Sec. (1) and (2) of Sec. 8, the Court of special Judge shall be deemed to be a Court of Sessions trying cases without a jury or without the aid of assessors. In contra-distinction to the Sessions Court this new court was to be a court of original jurisdiction. The Legislature then proceeded to specify which out of the various procedures set out in the Code, this new court shall follow for trial of offences before it. Sec 1 (1) specifically says that a special Judge in trial of offences before him shall follow the procedure prescribed in the Code of Criminal Procedure for trial of warrant cases by Magistrates. The provisions for trial of warrant cases by the Magistrate are to be found in Chapter XXI of 1898 Code. A glance through the provisions will show that the provisions therein included catered to both the situations namely, trial of a case initiated upon police report (Sec. 251A) and trial of cases instituted otherwise than on police report (Sec 252 to 257). If a special Judge is enjoined with a duty to try cases according to the procedure prescribed in foregoing provisions he will have to first decide whether the case was instituted upon a police report or otherwise than on police report and follow the procedure in the relevant group of sections. Each of the Secs. 251A to 257 of 1898 Code which are in *pari materia* with Secs 238 to 250 of 1973 Code refers to what the Magistrate should do. Does the special Judge in Secs 238 to 250 wherever the expression 'Magistrate' occurs. This is what is called legislation by the incorporation. Similarly, whether the question of taking cognizance arises, it is futile to go in search of question of taking cognizance arises, it is futile to go in search of the Magistrate to take cognizance of the offence, special Judge is a Magistrate? What is to be done is that one has to read the expression 'special Judge' in place of Magistrate, and the whole thing becomes crystal clear. The Legislature wherever it found the grey area clarified it by making specific provision such as the one in sub-s (2) of Sec. 8 and to leave no one in doubt further provided in sub-s. (3) that all the provisions of the Code of Criminal Procedure shall so far as they

are not inconsistent with the Act apply to the proceedings before a special Judge. At the time when the 1952 Act was enacted what was in operation was the Code of Criminal Procedure, 1898. It did not envisage any Court of a special Judge and the Legislature never wanted to draw up an exhaustive Code of Procedure for this new criminal court which was being set up. Therefore, it conferred power (taking cognizance of offences), prescribed procedure (trial of warrant cases by a Magistrate), indicated authority to tender pardon (Sec 338) and then after declaring its status as comparable to a Court of Sessions proceeded to prescribe that all provisions of the Code of Criminal Procedure will apply in so far as they are not inconsistent with the provisions of the 1952 Act. The net outcome of this position is that a new court of original jurisdiction was set up and whenever a question arose as to what are its powers in respect of specific questions brought before it as court of original criminal jurisdiction, it had to refer to the Code of Criminal Procedure undaunted by any designation claptrap. When taking cognizance, a Court of special Judge enjoyed the powers under Sec. 190. When trying cases, it is obligatory to follow the procedure for trial of warrant cases by a Magistrate though as and by way of status it was equated with a Court of Sessions. The entire argument inviting us to specifically decide whether a court of a special Judge for a certain purpose is a Court of Magistrate or a Court of Sessions revolves round a mistaken belief that a special Judge has to be one or the other, and must fit in the slot of a Magistrate or a Court of Sessions. Such an approach would strangle the functioning of the court and must be eschewed. Shorn of all embellishment, the court or a special Judge is a court of original criminal jurisdiction. As a court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the court. Except those specifically conferred and specifically denied, it has to function as a court of original criminal jurisdiction not being hide bound by the terminological status description of Magistrate or a Court of Sessions. Under the Code it will enjoy all powers which a court of original criminal

jurisdiction enjoys save and except the ones specifically denied.”

19. From the record, it has also borne out that during her life time, Geeta Singh (deceased) was vigorously pursuing the matter, and contested the litigation upto the Hon’ble Supreme Court. After her death, the material question, which has arisen for determination, before this Court, is about the fact whether her legal heir can be substituted in her place, being original complainant, in a case, in which, the learned Special Judge (Forests) Shimla, H.P. has exercised the powers under Section 156 (3) Cr. P.C. and directed to register the case, and investigate the matter.

20. On the complaint made by Geeta Singh (deceased), learned Special Judge (Forests), Shimla, H.P., vide order dated 17.10.2015, has passed the directions, under Section 156(3) of the Cr. P.C., directing investigation of the offence, under Sections 7 and 13(2) of the Prevention of Corruption Act.

Admittedly, the said offences are non-compoundable and cognizable.

21. As per Section 5 of the Prevention of Corruption Act, 1988, the procedure, prescribed by the Cr. P.C. for the trial of warrant case, by the Magistrate, is applicable to the offences, under the Prevention of Corruption Act. The Code of Criminal Procedure is silent as to what happens in the case of death of complainant, in a warrant case, whereas, Section 249 of the Cr. P.C. is not applicable in the present case, being the offence, alleged in the complaint, as non-compoundable offences. The provisions of Section 249 Cr. P.C. (now Section 272 of the BNSS), are reproduced as under:

“S. 249. Absence of complainant- When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything herein before contained, at any time before the charge has been framed, discharge the accused.”

22. Hon'ble Supreme Court in **A.R. Antulay's** case (supra) has also discussed the concept of locus standi, in such type of cases and held that concept of locus standi of the complainant is foreign to criminal jurisprudence. Relevant paragraph-6 of the judgment is reproduced as under:

“6. It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision Numerous statutory provisions, can be referred to in support of this legal position such as (i) Sec. 187 A of Sea Customs Act, 1878 (ii) Sec. 97 of Gold Control Act, 1968 (iii) Sec. 6 of Import and Export Control Act, 1947 (iv) Sec. 271 and Sec. 279 of the Income Tax Act, 1961 (v) Sec. 61 of the Foreign Exchange Regulation Act, 1973, (vi) Sec. 621 of the Companies Act, 1956 and (vii) Sec. 77 of the Electricity Supply Act. This list is only illustrative and not exhaustive. While Sec. 190 of the Code of Criminal Procedure permits anyone to approach the Magistrate with a complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made

such as to be found in Secs. 195 to 199 of the Cr. P. C. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i. e. an act or omission made punishable by any law for the time being in force (See Sec. 2 (n), Cr. P. C.) is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendatta or vengeance. If such is the public policy underlying penal statutes who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the court would require an unambiguous statutory provision and a tangled web of argument for drawing a far fetched implication, cannot be a substitute for an express statutory provision. In the matter of initiation of proceeding before a special Judge under Sec. 8 (1), the Legislature while conferring power to take cognizance had three opportunities to unambiguously state its mind whether the cognizance can be taken on a private complaint or not. The first one was an opportunity to provide in Sec. 8 (1) itself by merely stating that the special Judge may take cognizance of an offence on a

police report submitted to it by an investigating officer conducting investigation as contemplated by Sec. 5A. While providing for investigation by designated police officers of superior rank, the Legislature did not fetter the power of special Judge to take cognizance in a manner otherwise than on police report. The second opportunity was when by Sec. 8 (3) a status of a deemed public prosecutor was conferred on a private complainant if he chooses to conduct the prosecution. The Legislature being aware of a provision like the one contained in Sec. 225 of the Cr. P. C., could have as well provided that in every trial before a special Judge the prosecution shall be conducted by a Public Prosecutor, though that itself would not have been decisive of the matter. And the third opportunity was when the Legislature while prescribing the procedure prescribed for warrant cases to be followed by special Judge did not exclude by a specific provision that the only procedure which the special Judge can follow is the one prescribed for trial of warrant cases on a police report. The disinclination of the Legislature to so provide points to the contrary and no canon of construction permits the court to go in search of a hidden or implied limitation on the power of the special Judge to take cognizance unfettered by such requirement of its being done on a police report alone. In our opinion, it is no answer to this fairly well-established legal position that for the last 32 years no case has come to the notice of the court in which cognizance was taken by a special Judge in a private complaint for offences punishable under the 1947 Act. If something that did not happen in the past is to be the sole reliable guide so as to deny any such thing happening in the future, law would be rendered static and slowly whither away.”

(self emphasis supplied)

24. Where the proceedings have been initiated by the complainant Geeta Singh, then, on account of

her death, her legal representative (applicant) can be brought on record/impleaded as complainant, in the present case, as held by Hon'ble Supreme Court, in a case titled as, **"Ashwin Nanubhai Vyas versus State of Maharashtra & another"**, reported in AIR 1967 Supreme Court 983. Relevant paragraphs 3, 5, 6 and 7 are reproduced as under:

"3. The Code of Criminal Procedure provides only for the death of an accused or an appellant but does not expressly provide for the death of a complainant. The Code also does not provide for the abatement of inquiries and trials although it provides for the abatement of appeals on the death of the accused, in respect of appeals under ss. 411 A(2) and 417 and on the death of an appellant in all appeals except an appeal from a sentence of fine. Therefore, what happens on the death of a complainant in a case started on a complaint has to be inferred generally from the provisions of the Code.

The Code by Chapter XV, which is to be found in Part VI (Proceedings in Prosecutions), provides for the jurisdiction of a criminal court in inquiries and trials. This Chapter is divided into two Parts-A (Place of Inquiry of Trial) and B (Conditions requisite for initiation of Proceedings). Part B consists of ss. 190 to 199B. Section 190 lays down, inter alia, that any Presidency Magistrate may take cognizance of any offence upon receiving a complaint 'of fact which constitutes such offence. Sections 195 to 199B, however, place certain restrictions upon the power of the Chief Presidency Magistrate and other courts to take cognizance of cases. One such restriction is to be found in s. 198. It provides :

" 198. Prosecution for breach of contract, defamation and offences against marriage.

No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence:

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her behalf :

Provided further that The complaint of Kusum was filed to remove the bar contained in this section although for the offence under s. 417 no such bar existed. The offences under ss. 493 (a man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief) and 496 (a person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married) are non-cognizable, not compoundable and exclusively triable by Court of Session. They are serious offences, being punishable with imprisonment extending to 10 and 7 years respectively. The Presidency Magistrate, was not trying the case but only inquiring into it with a view to its committal to the Court of Session if the facts justified a committal. During this inquiry Kusum died. We have to determine what is the effect of the death of a complainant on an inquiry under Chapter XVIII in respect of offences requiring a complaint by the person aggrieved, after the complaint has been filed.

5. This case was being heard under Chapter XVIII which divides committal cases into two classes (a) those commenced on a police report and (b) other cases. The first kind is tried under the procedure

laid down in s. 207A. With that procedure we are not concerned. The other cases are tried under the procedure as laid down in the other provisions of Chapter XVIII. Section 208 of this Chapter provides that in any proceeding instituted otherwise than on police report the Magistrate shall "when the accused appears or is brought before him, proceed to hear the complainant (if any) and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or on behalf of the accused, or as may be called for by the Magistrate." The Magistrate then hears evidence for the prosecution unless he makes an order of commitment and after recording the evidence and examining the accused (if necessary) frames a charge. He may, after hearing further evidence, which the accused may wish to produce (unless for reasons to be recorded, the Magistrate deems it unnecessary to do so) either discharge the accused cancelling the charge or commit him to stand his trial before the Court of Session. There is no provision about the acquittal or discharge of the accused on the failure of the complainant to attend the court. This is not an omission but a deliberate departure from the Chapters on the trial of summons and warrant cases. In such trials, on the absence of the complainant, the accused is either acquitted or discharged. The intention appears to be that the Magistrate should proceed with the inquiry because had it not been so intended, the Code would have said what would happen if the complainant remains absent.

6. Mr. Keswani, however, contends that S. 198 provides that the cognizance of the case can only be taken on the complaint of a person aggrieved and the only exception to this general rule is where the complainant is a woman, who according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint. He contends that what applies to the initiation of the proceeding must also apply to the continuance of the proceeding. He submits that if cognizance

could not be taken unless a complaint was made in the manner provided in the section, the court cannot proceed with the inquiry unless the same condition continues to exist. In other words, because the section insists on a complaint of a person aggrieved, Mr. Keswani contends that continued presence of the person aggrieved throughout the trial is also necessary to keep the court invested with its jurisdiction except in the circumstances mentioned in the proviso and summarised above. We do not agree. The section creates a bar which has to be removed before cognizance is taken. Once the bar is removed, because the proper person has filed a complaint, the section works itself out. If any other restriction was also there the Code would have said so. Not having said so, one must treat the section as fulfilled and worked out. There is nothing in the Code or in Chapter XVIII which says what, if any, consequence would follow if the complainant remains absent at any subsequent hearing after filing the complaint. In this respect Chapter XVIII is distinctly dissimilar to the Chapters dealing with the trial of summons and warrant cases where it is specifically provided what consequence follows on the absence of the complainant.

7. *Mr. Keswani contends that the Presidency Magistrate has made a "substitution" of a new complainant and there is nothing in the Code which warrants the substitution of one complainant for another. It is true that the Presidency Magistrate has used the word "substitute" but that is not the effect of the order. What the Presidency Magistrate has done is to allow the mother to act as the complainant to continue the prosecution. This power was undoubtedly possessed by the Presidency Magistrate because of s. 495 of the Code by which courts are empowered (with some exceptions) to authorise the conduct of prosecution by any person. The words 'any person' would indubitably include the mother of the complainant in a case such as this. Section 198 itself contemplates that a complaint may be made by a person other than the person aggrieved and there seems to us no valid*

reason why in such a serious case we should hold that the death of the complainant puts an end to the prosecution.”

(self emphasis supplied)

25. The role of the complainant in the criminal proceedings, has also elaborately been discussed by a three-Judge Bench of Hon'ble Supreme Court, in a case titled as, “**J.K. International versus State (Govt.) of NCT Delhi) & others**”, reported in (2001) 3 Supreme Court Cases 462. Relevant paragraphs 9 to 14 are reproduced as under:

‘9. The scheme envisaged in the Code of Criminal procedure (for short the Code) indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the sessions court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code which reads thus:

If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the public Prosecutor or Assistant Public prosecutor,

and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

10. The said provision falls within the Chapter titled General Provisions as to Inquiries and Trials. When such a role is permitted to be played by a private person, though it is a limited role, even in the sessions courts, that is enough to show that the private person, if he is aggrieved, is not wiped off from the proceedings in the criminal Court merely because the case was charge sheeted by the police. It has to be stated further, that the Court is given power to permit even such private person to submit his written arguments in the Court including the sessions court. If he submits any such written arguments the Court has a duty to consider such arguments before taking a decision.

11. In view of such a scheme as delineated above how can it be said that the aggrieved private person must keep himself outside the corridors of the Court when the case involving his grievance regarding the offence alleged to have been committed by the persons arrayed as accused is tried or considered by the Court. In this context it is appropriate to mention that when the trial is before a magistrate court the scope of any other private person intending to participate in the conduct of the prosecution is still wider. This can be noticed from Section 302 of the Code which reads thus:

Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a public prosecutor or Assistant Public prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the

offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

12. The private person who is permitted to conduct prosecution in the magistrates court can engage a counsel to do the needful in the Court in his behalf. It further amplifies the position that if a private person is aggrieved by the offence committed against him or against any one in whom he is interested he can approach the magistrate and seek permission to conduct the prosecution by himself. It is open to the Court to consider his request. If the court thinks that the cause of justice would be served better by granting such permission the courts would generally grant such permission. Of course, this wider amplitude is limited to Magistrates courts, as the right of such private individual to participate in the conduct of prosecution in the sessions court is very much restricted and is made subject to the control of the Public Prosecutor. The limited role which a private person can be permitted to play for prosecution in the Sessions Court has been adverted to above. All these would show that an aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognizance of the offences based on the report submitted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them.

13. We may now proceed to point out the usefulness of the observations made by the three-judge bench in *Bhagwant Singh vs. Commissioner of Police (supra)*. *Bhagwati J.* (as he then was) who spoke for the bench pointed out that the informant having taken the initiative in lodging the First Information Report with a view to initiate investigation by the police for the purpose of ascertaining whether any offence has

been committed (if so by whom) is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer-in-charge of the police station on such FIR should be communicated to him. The bench said this with reference to Section 173(2)(i) of the Code.

14. This Court further said in the decision that if the magistrate finds that there is no sufficient ground for proceeding further the informant would certainly be prejudiced because the FIR was lodged by him. After adverting to different clauses of Section 173 of the Code learned judges laid down the legal proposition in paragraph 5 of the said judgment. The law so laid down is that though there is no obligation on the magistrate to issue notice to the injured person or to a relative of the deceased in order to provide him an opportunity to be heard at the time of consideration of the final report of the police (except when the final report is to the effect that no offence had been made out in the case) the informant who lodged the FIR is entitled to a notice from the magistrate. In other instances, the injured or any relative of the accused can appear before the magistrate at the time of consideration of the police report if such person otherwise comes to know that the magistrate is going to consider the report. If such person appears before the magistrate it is the duty of the magistrate to hear him. It is profitable to extract the relevant portion of that ratio:

“The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured

person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report.”

(self emphasis supplied)

26. Similar view has again been taken by Hon'ble Supreme Court in **Balasaheb K. Thackeray & another versus Venkat alias Babru and another**, reported in (2006) 5 Supreme Court Cases 530. Relevant paragraphs 4 to 7 of the judgment are reproduced as under:

“4. At this juncture it is relevant to take note of what has been stated by this Court earlier on the principles applicable. In Ashwin Nanubhai Vyas v. The State of Maharashtra and Anr. (AIR 1967 SC 983) with reference to Section 495 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the 'Old Code') it was held that the Magistrate had the power to permit a relative to act as the complainant to continue the prosecution. In Jimmy Jahangir Madan v. Bolly Cariyappa Hindley (dead) by Lrs. (2004 (12) SCC 509) after referring to Ashwin's case (supra) it was held that heir of the complainant can be allowed to file a petition under Section 302 of the Code to continue the prosecution.

5. [Section 302](#) of the Code reads as under:-

"302. Permission to conduct prosecution (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the

Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

6. To bring in application of Section 302 of the Code, permission to conduct prosecution has to be obtained from the Magistrate inquiring into or trying a case. The Magistrate is empowered to permit prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person other than the Advocate-General or the Government Advocate or a Public Prosecutor or Assistant Public Prosecutor shall be entitled to do so without such permission.

7. Above being the position, if any permission is sought for by the legal heirs of the deceased complainant to continue prosecution, the same shall be considered in its perspective by the Court dealing with the matter. It is brought to the notice that by order dated 13.10.2003 further proceedings before the Magistrate are stayed. In that background, Mr. Adsure submitted that the application shall be filed before this Court. If and when any application is filed the same shall be dealt with appropriately. Ordered accordingly.

27. The Hon'ble Supreme Court in a case titled as **Chand Devi Daga & others versus ManjuK. Humatani & others**, reported in (2018) 1 Supreme Court Cases 71, has discussed the effect of death of complainant, during proceedings, vis-a-vis, right of

legal heirs of deceased complainant to continue prosecution. In the said case, it has been held that even after death of the complainant, legal heirs of deceased complainant may prosecute the pending proceedings. Relevant paragraphs 10 to 14 are reproduced as under:

“10. In this context a reference is made to judgment of this Court in Ashwin Nanubhai Vyas Vs. State of Maharashtra, AIR 1967 SCC 983. In the said case this Court had occasion to consider the provisions of Criminal Procedure Code, 1898. The complainant had filed a complaint against the appellants. The complaint was filed under Sections 498 and 496 IPC. Accused was summoned. However, during the pendency of the complaint, the complainant died. The complainant’s mother applied for substituting her to act as complainant and continue the proceedings. Magistrate permitted the mother of complainant to pursue the complaint against which revision was filed before the High Court which was dismissed. Aggrieved by the order of the High Court the appellant had come up before this Court. In the above context this Court considered the pari materia provisions of the Criminal Procedure Code, 1898 with regard to Section 247 (now Section 256) it was specifically held that said provision does not furnish any valid analogy. In paragraph 4 of the judgment following was observed:

“4 Mr. Keswani for Vyas, in support of the abatement of the case, relied upon the analogy of Section 431 under which appeals abate and Sections 247 and 259 under which on the complainant remaining absent, the court can acquit or discharge the accused. These analogies do not avail him because they provide for special situations. Inquiries and trials before the court

are of several kinds. Section 247 occurs in Chapter XX which deals with the trial of summons cases by a Magistrate and Section 259 in Chapter XXI which deals with trial of warrant cases before Magistrates. Under the former, if summons is issued on a complaint and the complainant on any day remains absent from the court, unless it decides to proceed with the trial, must acquit the accused. This can only happen in the trial of cases, which are punishable with imprisonment of less than one year. This not being the trial of a summons case but a committal inquiry, Section 247 neither applies nor can it furnish any valid analogy. Similarly, Section 259, which occurs in the Chapter on the trial of warrant cases, that is to say cases triable by a Magistrate and punishable with imprisonment exceeding one year can furnish no analogy. Under Section 259, if the offence being tried as a warrant case is compoundable or is not cognizable the Magistrate may discharge the accused before the charge is framed if the complainant remains absent. Once again this section cannot apply because the Presidency Magistrate was not trying the case under Chapter XXI."

11. This Court further had occasion to consider Section 495 of Code 1898 (now Section 302 of Criminal Procedure Code) and this Court laid down in paragraph 7 as follows:

"7 Mr. Keswani contends that the Presidency Magistrate has made a "substitution" of a new complainant and there is nothing in the Code which warrants the substitution of one complainant for another. It is true that the Presidency Magistrate has used the word "substitute" but that is not the effect of the order. What the Presidency Magistrate has done is to allow the mother to act as the complainant to continue the prosecution. This power was undoubtedly possessed by the Presidency Magistrate because of Section 495 of the Code by which Courts are empowered (with some exceptions) to authorise the conduct of prosecution by any person. The words 'any person' would indubitably include the mother of the complainant in a case such as this. Section 198

itself contemplates that a complaint may be made by a person other than the person aggrieved and there seems to us no valid reason why in such a serious case we should hold that the death of the complainant puts an end to the prosecution.”

12. At this stage reference to Section 302 of the Criminal Procedure Code is necessary. Section 302 of the Criminal Procedure Code is contained in Chapter XXIV with the heading “General provisions as to inquiries and trials”. Section 302 relates to permission to conduct prosecution which is to the following effect:

“Section 302. Permission to conduct prosecution

(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission.

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.”

13. This Court had occasion to consider Sections 256 and 302 in *Balasaheb K. Thackeray & Anr. Vs. Venkat @ Babru*, (2006) 5 SCC 530. In the above case complaint was filed under Section 500 read with Section 34 IPC. A petition was filed under Section 482 of the Code 1973 against the order of issue of process in the High Court which was dismissed. SLP was filed in this Court in which notice was issued and during the pendency of the appeal it was noted that complainant had died. It was contended that the complaint be dismissed on the ground that complainant is dead. This Court in the above context referred to Sections 256 and 302. This Court repelled the argument of the appellant that complaint be dismissed on the ground that complainant had died. Following was held in paragraphs 3 to 6:

“3. Learned counsel for the appellants with reference to Section 256 of the Code submitted that the complaint was to be dismissed on the ground of the death of the complainant. As noted above learned

counsel for Respondent 1's legal heirs submitted that the legal heirs of the complainant shall file an application for permission to prosecute and, therefore, the complaint still survives consideration.

4. At this juncture it is relevant to take note of what has been stated by this Court earlier on the principles applicable. In Ashwin Nanubhai Vyas v. State of Maharashtra with reference to Section 495 of the Code of Criminal Procedure, 1898 (hereinafter referred to as "the old Code") it was held that the Magistrate had the power to permit a relative to act as the complainant to continue the prosecution. In Jimmy Jahangir Madan v. Bolly Cariyappa Hindley after referring to Ashwin case it was held that heir of the complainant can be allowed to file a petition under Section 302 of the Code to continue the prosecution.

5. Section 302 of the Code reads as under:

'302. Permission to conduct prosecution.—(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader."

6. To bring in application of Section 302 of the Code, permission to conduct the prosecution has to be obtained from the Magistrate inquiring into or trying a case. The Magistrate is empowered to permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person other than the Advocate General or the Government Advocate or a Public Prosecutor or Assistant Public Prosecutor shall be entitled to do so without such permission."

14. Two Judge Bench in Jimmy Jahangir Madan Vs. Bolly Caiyappa Hindley (dead) By Lrs., (2004) 12 SCC 509 referring to this Court's judgment in Ashwin Nanubhai Vyas (supra) had held that heirs of

complainant can continue the prosecution. Following was held in paragraph 5:

“5. The question as to whether the heirs of the complainant can be allowed to file an application under Section 302 of the Code to continue the prosecution is no longer res integra as the same has been concluded by a decision of this Court in the case of Ashwin Nanubhai Vyas v. State of Maharashtra in which case the Court was dealing with a case under Section 495 of the Code of Criminal Procedure, 1898, which is corresponding to Section 302 of the Code. In that case, it was laid down that upon the death of the complainant, under the provisions of Section 495 of the said Code, mother of the complainant could be allowed to continue the prosecution. It was further laid down that she could make the application either herself or through a pleader. Undisputedly, in the present case, the heirs themselves have not filed the applications to continue the prosecution, rather the same have been filed by their power of attorney holders”

(self emphasis supplied)

28. In view of above, this Court is of the view that crime is always against the State and a person, who is aggrieved from the offence, allegedly committed by the accused, may approach the Court by filing the complaint.

29. Even in the absence of any specific provisions, under the BNSS/ Cr. P.C., the Court, by exercising the powers under Section 302 of Cr. P.C. can permit any person, what to talk of legal heirs of the complainant, to continue with the proceedings. Provisions of Section 302 Cr. P.C. read as under:

“S. 302 Permission to conduct prosecution-Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any

person other than a police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission;

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

30. When, the legislature, in its wisdom, has used the term “any person” in this Section, then, the said term cannot be interpreted in a manner to exclude the legal heirs of original complainant Geeta Singh.

31. In view of above, this Court is of the view that the legal heirs of Geeta Singh (applicant) has every locus to get himself impleaded in the present proceedings, which have been enumerated out of complaint, filed by Geeta Singh, under Section 156 (3) Cr. P.C.

32. Consequently, the present application is allowed and the applicant is ordered to be impleaded as respondent, in the present case.

33. The Registry is directed to carry out necessary corrections, in the cause title.

34. The application is, thus, disposed of.

Cr. MMO No. 459 of 2022

Amended memo of parties be filed, on
or before the next date of hearing.

List on 16.12.2025.

November 25, 2025
(Kalpana)

(Virender Singh)
Judge