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resented by Advocate: [Signature]

Asstt Supdt.
District Court Nagpur

IN THE COURT OF HON'BLE DISTRICT AND SESSION

JUDGE NAGPUR

[Signature]

CRIMINAL REVISION NO. 118 OF 2024

APPELLANT: SANJAY HARIRAM AGRAWAL,

Age 58 years, Occ: Business,

Residing at 7 Hari Sava Street,

Kidderpore, Kolkata, 700023

//VERSUS//

RESPONDENT: STATE OF MAHARASHTRA

Through Ganesh Peth

Police Station

Nagpur



REVISION UNDER SECTION 397 OF THE CODE OF
CRIMINAL PROCEDURE 1973.

The appellant (Accused No.3) most respectfully and
humbly begs to submit as follows:-

Being aggrieved by the Order passed by Hon'ble 2nd Add. CJM

NAGPUR on dated 16/04/2024 in RCC No. 147/2002 State Versus

Sunil Kedar and others thereby Learned Lower Court rejected the

application for directing the prosecution to furnish/place on record
copy of split up Charge Sheet. The Appellant Prefer Revision on
Misc CRI Application

Following Facts and Grounds:-

Asstt Supdt.
District Court Nagpur

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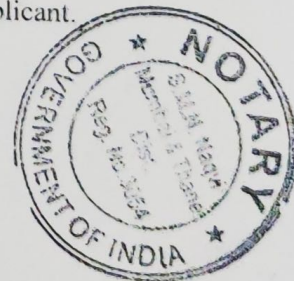
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FACTS

i. The Accused No.3 i.e Appellant herein facing trial under section 406, 409, 468, 471, 34, 120 B of Indian Penal Code. The Appellant has filed application for directing the prosecution to furnish/place on record copy of split up Charge Sheet of accused No.3 as remaining accused in Case Number RCC No. 14/2002 already decided therefore accused No.3/Appellant prayed application for directing the prosecution to furnish/place on record copy of split up Charge Sheet as per law. The applicant prefers the present revision on the following amongst others ground, which are in alternative and without prejudice to each

GROUNDS

1. Order of Learned Lower Court based on factually incorrect submission and also interpreting the applicable provisions of law in incorrect manner.
2. The Learned trial court failed to appreciate the legal provisions in the subject matter legally and validly and pass the order, causing rejection of the application of the applicant.



3. The Learned trial court failed to appreciate the basic concept of the circumstances in respect of split of cases and therefore incorrectly, rejected the application of the applicant.

4. The Learned trial court have not considered the ratios laid down in judgment, H. Aarun Basha VS inspector of Police (Cr. LOP No. – 28952 of 2018) therefore wrongly and under misconception, rejected the application of the applicant.

5. The Learned Lower Court has not considered the submissions of the applicant that this circumstances in the subject matter needs split of cases and separate trials however, the trial court failed to consider the afforded analogy of the applicant and rejected the application of the applicant.

6. The Learned trial court failed to consider that even on earlier occasion, the split of cases was not in accordance with law, and the submission of the applicant was not considered at all by the trial court and caused rejection of the application of the applicant.

7. The Learned trial court failed to consider that the applicant has approached the learned trial court with proper and

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(4)

(5)

valid legal submissions in respect of the split of the cases as also the stay granted earlier. It is pertinent to not even the trial code on factually also incorrectly observed in respect of the stay granted earlier in the subject matter and other matters and accordingly under misconception, the trial court rejected the application of the applicant.

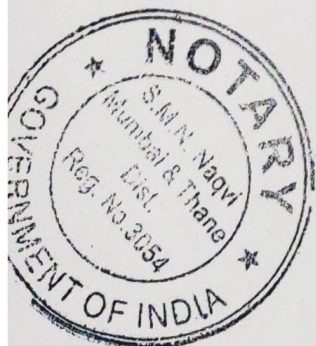
8. The said order is the basic principle of law and also against the principle of natural justice, and therefore liable to be set aside by this honorable court.

9. The order of learned lower court even otherwise is not based on true and correct facts and legal propositions and therefore liable to be set aside.

10. Learned lower court failed to take into consideration that the entire charge sheet of RCC No. 14/2002 already exhibited and other accused prefer Criminal Appeal for challenging their conviction order.

ii. The applicant respectfully submit that the present revision is filed in Hurry and therefore reserve his right to add, alter or modify

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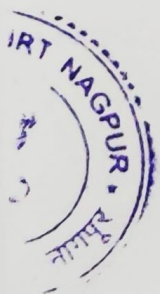
or delete any of the ground or submission with the leave of this on rebel court. The revision is well within limitation.

iii. The appellant has no other equally efficacious remedy than to approach this Hon'ble Court by challenging the impugned judgment and order.

iv. The appellant has not moved to the Hon'ble Supreme Court of India regarding the subject matter of the present appeal any time before in the past. And this is the first memo of revision preferred before this Hon'ble Court.

PRAYER: Under the circumstances it is therefore prayed that this Hon'ble Court be. graciously pleased :-

- A. Allowed present Revision and directed to the Prosecution to furnish /place on record copy of split up charge sheet.
- B. To call for the records and proceeding in Case No. RCC No.147/2002 from the Hon'ble Add.CJM, Nagpur and. And to pass any other relief as this Hon'ble Court may deem fit and proper.



S. M. M. M.

APPELLANT

30/4/24

COUNSEL FOR APPELLANT

SOLEMN AFFIRMATION

I SANJAY HARIRAM AGRAWAL, Age 58 years, Occ: Business
Residing at 7 Hari Sava Street, Kidderpore, Kolkata, 700023 do
hereby takes an oath and states on this Solemn Affirmation that the
contents of the above said paras of Revision are true and correct to
the best of my knowledge and belief, it read over to me in a
vernacular language known to me. Hence, signed on this 30 th
APRIL 2024 at Mumbai.

I know and identify the deponent

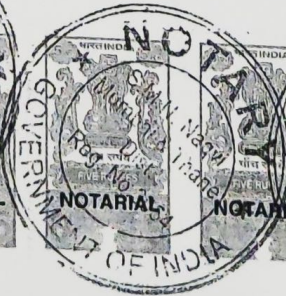
(ADVOCATE)

S. M. N. Nagvi
DEPONENT
30/4/24

BEFORE ME
S. M. N. Nagvi
NOTARY
Government of India
Mumbai & Thane Dist.

SR No. 611 P No. 52

NOTARY Register. 11/24 Date 30/4/24



IN THE COURT OF HON'BLE DISTRICT AND SESSION

JUDGE NAGPUR

CRIMINAL REVISION NO. OF 2024

APPELLANT: SANJAY HARIRAM AGRAWAL,

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RESPONDENT: STATE OF MAHARASHTRA

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**APPLICATION ON BEHALF OF THE APPELLANT FOR
BRINGING ON RECORD ADDITIONAL FACTS RELEVANT
FOR THE DECISIONS OF THE PRESENT REVISION**

1. That the present application is being filed to submit additional facts and grounds in support of the revision petition which has been filed primarily challenging the order dated 16.04.2024 passed in RCC No. 147/2002 by learned 2nd ACJM Nagpur.
2. As stated in the revision petition the Criminal case RCC No. 147/2002 State v/s Sunil Kedar has already been disposed of by the learned trial court by passing the judgment dated 22/12/24 yet the present proceedings are continued to be conducted under the same trial which shall cause serious prejudice to the petitioner as the trial has not been split up/ separated from the earlier trial in RCC NO. 147/2002.

3. It is the submission of the petitioner that the continuance of the trial against the petitioner on the basis of the same record of RCC NO. 147/2002 and also to frame the charge on the basis of same record without providing the split up chargesheet i.e. the chargesheet and the relevant documents which pertains to petitioner alone.
4. That the following facts could show that how the continuance of the trial in same RCC NO. 147/2002 is contrary to the orders passed by the High Court and the settled legal position.
 - i. That earlier a Criminal Writ Petition No. 541 of 2009 (PIL) was filed by one Ramesh Narayanrao Mankar in which the present applicant filed an intervention application. The said PIL was disposed of vide order dated 17 June 2010 and the prayer for speedy trial of RCC number 147 of 2002 was rejected. In the said order it was mentioned that public interest litigation at the instance of the petitioner who was a social activist and that time being the President of Zila Parishad was an ex-officio member of Nagpur district central cooperative bank limited cannot be entertained. It was also mentioned that since there are criminal matters older than RCC number 147 of 2002, the orders that could be passed would be to ensure that old criminal matters pending before different JM FC courts in Nagpur be disposed of expeditiously.
 - ii. That one of the accused namely Sanjay Hariram Agarwal filed 9 criminal applications under section 407 read with section 482 of Cr. P. C. before Hon'ble

Bombay High Court, Bombay for transfer of 9 criminal cases pending before various courts in state of Maharashtra to one court in the city of Mumbai. That the 9 Criminal Applications were placed before the Ld. Single Judge of Hon'ble Bombay High Court, Bombay wherein on 25.11.2014 the Ld. single judge was pleased to issue notice in five applications which related to cases registered in Mumbai and Pune and for four other cases which related to Wardha, Nagpur, Amravati and Osmanabad an order was passed to seek appropriate directions from the Chief Justice for continuance of the said Applications at Principal Seat at Bombay as they fall within the jurisdiction of other benches of the High Court. True copy of the order dated 25.11.2014 passed by Ld. Single Judge is filed herewith and marked as **Annexure RP-1**.

- iii. That in view of the liberty granted by the Ld. Single Judge of Hon'ble Bombay High Court at Bombay the accused Sanjay Hariram Agarwal filed Praecipe dated 27.11.2014 before the Hon'ble Chief Justice. In the said Praecipe apart from seeking continuance of cases at Principal Seat of Bombay High Court it also sought for transfer of Criminal Application No. 20 of 2014 and 50 of 2014 pending before Nagpur Bench to Principal Seat of Hon'ble Bombay High Court. True copy of praecipe dated 27.11.2014 filed on behalf of Sanjay Agrawal is filed herewith and marked as **Annexure RP-2**

- iv. That Hon'ble Chief Justice by order dated 17.12.2014 was pleased to accept the request that Criminal Application No. 627 of 2014 (Wardha), 628 of 2014 (Nagpur), 630 of 2014 (Amravati) and 1022 of 2014 (Osmanabad) be heard and decided by principal seat at Mumbai. True copy of order dated 17.12.2014 passed by Hon'ble the Chief Justice is filed herewith and marked as **Annexure RP-3**.
- v. That Criminal Application No. 628 of 2014 for transfer of RCC number 147 of 2002 from Nagpur to Bombay came up for hearing on 19.12.2014 before the Ld. Single Judge of Hon'ble Bombay High Court, at Mumbai pursuant to permission/ liberty granted by Hon'ble Chief Justice. The Ld. Single Judge vide order dated 19 December 2014 issued notice and granted ad interim relief as prayed in prayer clause (b) which was for stay of the trial in RCC number 147 of 2002. True Copy of order dated 19.12.2014 passed by Hon'ble Bombay High Court in Criminal Application No. 628 of 2014 is filed herewith and marked as **Annexure RP-4**.
- vi. That by the order dated 23.12.2014 in PIL 25/ 2014, Hon'ble Bombay High Court, Nagpur Bench directed the concerned Criminal Court, which is the court of CJM, Nagpur, to expedite the trial and conclude the same as expeditiously as possible and in any case within the period of one year from 23.12.2024 and disposed off PIL No. 25/2014. It was also indicated by

the court that the trial of the absconding accused be separated.

- vii. That although the PIL 25/2014 was disposed of an application again came to be filed by the petitioner therein in which the Hon'ble Bombay High Court, Nagpur bench vide order dated 06.04.2018 was pleased to order that the grant of interim order in favor of petitioner in transfer case shall not come in the way of learned trial judge to conduct the trial, except against the person [Sanjay Hariram Agarwal] in whose case the order is passed by the learned Single judge of the Hon'ble Bombay High court. The relevant para is quoted herein below: - "CORAM: B.R. GAVAI AND M.G GIRATKAR,

JJ

Date:6/4/2018

1....

2....

3.

4. We therefore clarify that the said order would not come in the way of learned trial judge to conduct the trial, except against the person in whose case the order is passed by the learned Single Judge of this Court at Bombay."

- viii. That from the aforesaid order it is absolutely clear that the trial of petition was separated /split-up from the other accused whose trial was directed to be proceeded

with. It is at this stage that the learned trial court should have assigned a fresh number to the split-up case relating to the Revisionist and enter the same in the relevant register. In case the split-up case remains pending for long time and efforts to secure the presence of the accused have failed and the case against the accused who have appeared has been disposed of, the case shall be kept in the register of long pending cases. However, as the records no such action has been taken despite the orders of the Bombay High Court.

- ix. That the Hon'ble Bombay High Court, Nagpur bench in the same PIL vide order dated 04.10.2019 has directed as under which is quoted hereinbelow:

"The record and the proceedings of criminal case No. 147/2002 (Crime No.101/2002 registered with the police station Ganeshpeth, Nagpur) be called immediately and placed before the court of CJM, Nagpur, so that the trial of the case except against the accused (Sanjay H. Agarwal) Whose trial has been stayed by the learned Single Judge At Mumbai proceeds further in compliance with the directions given many times by this Court earlier. If any record of the criminal case pending against said Sanjay Hariram Agarwal would be required by the Mumbai Court, the learned CJM shall separate that part of the record which pertains to the said accused and send it

to Mumbai Court. Special bailiff be deputed for bringing the record and proceedings. "

- x. That, following the aforesaid directions of the Hon'ble Bombay High Court, Ld. Trial judge vide order dated 14.11.2019 passed the following order after hearing the objection of the accused and on framing of charge:-

ORDER

1. *All the objections raised on behalf of the accused persons on the point of framing of charge alongwith prayer to discharge the accused is hereby rejected.*
2. *The matter shall be proceeded ahead as against accused persons excluding accused no. 3 Sanjay Hariram Agarwal and accused No. 10 Kanan Vasant Mewawala who appears to be absconding since long.*

True copy of order dated 14.11.2019 passed by the trial court in RCC No. 147 of 2002 is annexed as **ANNEXURE-RP-5**

5. That in view of the aforesaid order the petitioner was kept out of the trialsimilarly as an absconding accused in case RCC No. 147/2002 and no charges were framed against the petitioner and the whole trial proceeded against the other accused and culminated into a judgment dated ----- by the learned CJM, Nagpur.
6. That after the termination of the trial of other accused and disposal of RCC No. 147/2002, instead of the trial of petitioner be continued on a separate Trialnumber involving the chargesheet and documents relevant for the petitioner alone,

shockingly the trial against the petitioner is sought to be continued in the same RCC No. 147/2002 and the entire record of the said Trial case is being relied upon by the trial court without providing the copy of split-up chargesheet which is illegal and improper.

7. That the Hon'ble Madras High Court in the case of *H. Arun Basha v. The State in Crl. O.P. No. 28952 of 2018 decided on 19.12.2018 reported in 2018 SCC online Mad 12845* has issued guidelines to be followed by the trial Court in case of the non-appearance of the accused and the trial being split up in para 6 of the judgement as under:-

"6. The following guidelines can be kept in mind while dealing with cases of absconding accused.

i. Where the Court has issued process for the appearance of an accused and the same could not be served and if the Court is satisfied that the accused is in abscondence, the Court may, after having waited for a reasonable time, proceed under Section 82 of the Cr.P.C.

ii. If the case involves a single accused against whom proceedings have been initiated under Section 82 of the Code, the Court shall shift the case from relevant register to the register of long pending cases.

iii. When there are several accused persons in a case and only some of them have appeared or have been produced before the Court and if the Court is satisfied that the

presence of other accused cannot be secured within a reasonable time, having due regard to the right of such of the accused in attendance to have the case against them enquired into or tried without delay, the Court may split up the case if it is satisfied that such splitting up will cause no prejudice either to the prosecution or to the accused in attendance and proceed with the enquiry or trial as regards the accused who are in attendance.

iv. While splitting up the case as referred to in (iii), the Court shall assign a fresh number to the split up case relating to the absconding accused and enter the same in the relevant register of the <http://www.judis.nic.in> current year.

v. In a case exclusively triable by a Court of session, when there are several accused persons and only some of them have appeared or have been produced before the Court, the Magistrate Court shall follow the same procedure mutatis mutandis till the stage of splitting up of case, as provided in clauses (i) to (iv).

vi. The Magistrate Court shall thereafter comply with the provisions of Section 207 or Section 208, as the case may be, insofar as the accused in attendance and commit the case to the Court of Session.

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"7. ... The High Court ought to have considered the facts of each case and decided the appeals in accordance with law and in the absence of such consideration by the High Court, it will not be proper for us to decide on the culpability of each of the respondent-accused in these appeals. We, therefore, set aside the impugned common judgment [Joseph v. State of Kerala, 2005 SCC OnLine Ker 35 : (2005) 2 KLT 269] of the High Court and remand the matters back to the High Court for fresh disposal in accordance with law."

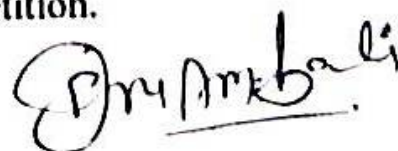
34. The other judgment relied upon by Mr Nagamuthu is VinubhaiRanchhodbhai Patel v. RajivbhaiDudabhai Patel [VinubhaiRanchhodbhai Patel v. RajivbhaiDudabhai Patel, (2018) 7 SCC 743 : (2018) 3 SCC (Cri) 340] . In the above case also, two accused, namely, Accused 16 and 17 were tried separately as they were absconding. Their trial was registered as Case No. 58 of 1998. The trial court had recorded the acquittal of both the accused. Interestingly, in Sessions Case No. 58 of 1998, no evidence was recorded independently. The trial court had proceeded to record acquittal relying upon the evidence recorded in the earlier Sessions Case No. 11 of 1992 which was trying separate set of co-accused. Recording the above fact, Chelameswar, J., observed in paras 47 and 48, regarding impermissibility

of the procedure adopted by the trial court with respect to judgment in Sessions Case No. 58 of 1998.

43. The essence of the above synthesis is that evidence recorded in a criminal trial against any accused is confined to the culpability of that accused only and it does not have any bearing upon a co-accused, who has been tried on the basis of evidence recorded in a separate trial, though for the commission of the same offence."

11. That the objective as stated in the aforesaid judgement can only be achieved when the trial is separated and a separate trial is conducted by allotting a separate trial number and furnishing the separate chargesheet which contains only those documents which relate to the revisionist.
12. That further the orders passed by Hon'ble Bombay High Court, as stated above, also clearly states that the trial of the revisionist is to be separated and separate trial is to be conducted by separating the records which relate to the revisionist and the of the other accused.
13. The revisionist humbly submit that therefore the impugned order is to be set aside and necessary direction be issued in that regard as prayed for in the revision petition.

Date: 25/10/24
NANPUR



COUNSEL FOR APPELLANT