2026:BHC-GOA:664

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.5 OF 2026

1. Smt. Shaila Damodar Sinai Borkar,
66 years of age,
Wife of Shri Damodar Maheshwar Sinai Borkar,
Resident of Flat No.S-3, 2nd Floor,
Navadurga Housing Co-operative Society,
Tisk, Ponda-Goa.

2. Dr. Priti Siddsh Kharangate,
39 years of age,
Wife of Mr Siddesh Subodh Kharangate,
Residing at House No.1025, Vanxem,
VTC, Loutulim, South Goa, 403718. ...Petitioners

Versus

1. The Officer Incharge,
Police Inspector,
Ponda, Goa.

2. State,
Through the Public Prosecutor,
High Court of Bombay at Porvorim, Goa.

3. Shri Vasudev Premanand Sinai Borkar,
Son of late Shri Premanand Borkar,
About 46 years of age,
Resident of Montepoi Police Quarters,
Behind All India Radio,
Altinho, Panaji, Goa. ... Respondents

Ms Anushka Kuvelkar, Advocate for the Petitioners.

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Mr Nikhil Vaze, Additional Public Prosecutor for Respondent Nos.1 and 2/State.

Mr Kabir Sabnis, Advocate for Respondent No.3.

CORAM : ASHISH S. CHAVAN, J.

Reserved on : 23rd MARCH 2026
Pronounced on : 2nd APRIL 2026

JUDGMENT :

1. By way of the present Writ Petition, the Petitioners have sought twofold reliefs. Firstly, to quash and set aside the order dated 20.08.2025 (impugned order) passed by the learned Sessions Judge and, secondly, to quash and set aside FIR No.125/2025 dated 30.08.2025 registered against the Petitioners under Sections 442, 427, 504, 379 r/w 34 of IPC at the instance of Ponda Police Station.

2. The Petitioner No.1 is a senior citizen presently 66 years old and Petitioner No.2, the daughter of Petitioner No.1, is a doctor by profession. The Respondent No.2 is State of Goa and Respondent No.3 is the Complainant at whose instance the impugned order is passed and consequently the FIR is registered.

3. The chronology of events necessary to determine the issue arising out of the present Petition is summarised as under:

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(i) Respondent No.3 filed an application under Section 156(3) of the Code of Criminal Procedure before the learned JMFC, A Court, Ponda, seeking a direction to the concerned Police Station to register an FIR against the Petitioners herein. Learned JMFC vide its order dated 15.03.2024, was pleased to dismiss the aforesaid application under Section 156(3) of CrPC.

(ii) Aggrieved by the order dated 15.03.2024, Respondent No.3 preferred Criminal Revision Application bearing No.66/2024 before the Additional Sessions Judge, Merces, sitting at Ponda. Vide order dated 20.08.2025 (impugned order), learned Sessions Judge was pleased to allow the Revision Application, set aside the order of the learned JMFC and direct the concerned Police Station to register an FIR against the Petitioners.

(iii) In consequence to the aforesaid directions, the concerned Police Station registered an FIR dated 30.08.2025 against the Petitioners under Sections 442, 427, 504, 379 r/w 34 of IPC.

4. Heard Ms Anushka Kuvelkar, learned Counsel for the Petitioners, Mr Nikhil Vaze, learned Additional Public Prosecutor for Respondent Nos.1 and 2/State and Mr Kabir Sabnis, learned Counsel for Respondent No.3.

5. Rule. The rule is made returnable forthwith at the request of and with the consent of the learned Counsel for the parties. With the assistance of the learned Counsel for the parties, I have perused the record.

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6. Although, various grounds are set out in the Petition on merits, the Petitioners have restricted themselves to a short question of law. It was argued on behalf of the Petitioners that they were not heard by the learned Sessions Judge while deciding Criminal Revision Application No.66/2024 in a clear infraction of the requirement of law and the observations of the Hon'ble Supreme Court. On this ground, the impugned order deserves to be set aside.

7. The question that arises for my consideration is, whether, in law, the accused/proposed accused is required to be heard before the Revisional Court in a revision at the instance of the Complainant whose application under Section 156(3) of CrPC is rejected by the Magistrate.

8. At the outset, before adverting to the facts, it would be apposite to set out the framework of the provisions of the Code of Criminal Procedure dealing with Revision. Sections 397, 399 and 401 of CrPC read as follows:

> ***"397. Calling for records to exercise powers of revision.—***
>
> *(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.*
>
> *Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be*

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deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

***399. Sessions Judge's powers of revision**.—*

(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

***401. High Court's powers of revision**.—*

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing

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the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

9. From the aforesaid framework of the provisions, it is seen that Section 401(2) which deals with the High Court's power of Revision clearly stipulates that no order shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence. Section 397 r/w Section 399, dealing with Sessions Judge's powers of Revision, mandate that the Sessions Judge can exercise all or any of the powers which may be exercised by the High Court under Section 401. Section 399 specifically provides that the provisions of sub-sections 2,3,4 and 5 of Section 401 shall, so far as may be, apply to the proceedings before the Sessions Judge. In effect, the revisional power of the Sessions Judge also

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mandates that no order can be passed to the prejudice of the accused or other person without giving him an opportunity of being heard.

10. Thus, at the outset, it is evident that the statute mandates that an opportunity be given to the accused or 'other person' in the revisional jurisdiction of either the High Court or the Sessions Court and that no order can be passed to the prejudice of such person unless he has had an opportunity of being heard in his own defence.

11. On behalf of the Petitioners, it was submitted that the Petitioners are prejudiced by the fact that they were not heard before the learned Sessions Judge in Criminal Revision Application No.66/2024 which, in their submission is in direct violation of the statutory requirement and hence the impugned order deserves to be set aside.

12. The Petitioners have relied on the judgments of ***Santhakumari and Ors. V/s. State of Tamil Nadu and Anr.***[1], ***Shri Shyamsunder Radheshyam Agarwal V/s. State of Maharashtra and Anr.***[2], and a Full Bench judgment of the Allahabad High Court in the matter of ***Jagannath Verma and Ors. V/s. State of UP and Anr.***[3], in support of their submissions.

13. On behalf of Respondent No.3 (Complainant), a reply affidavit was filed on merits. However, in response to the submissions on behalf of the

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[1] (2023) 15 SCC 440
[2] WPCR No.4036/2012 decided on 08.02.2013
[3] AIR 2014 ALLAHABAD 214

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Petitioners, Respondent No.3 countered that the right of the accused/proposed accused to be heard before Revisional Court in a Revision at the instance of the Complainant against the order by the Magistrate rejecting the application under Section 156(3) CrPC would depend upon whether the Magistrate has taken cognizance of the offence or not. It was submitted that the accused/proposed accused, would have the right to be heard in Revision if the Magistrate has taken cognizance and proceeded under Chapter XV of CrPC. However, since an order rejecting the application under Section 156(3) CrPC is a pre-cognizance order, as in the present case, the proposed accused would not have a right to be heard before the Magistrate nor before the Revisional Court. On behalf of the Respondent No.3, reliance was placed on the judgment of ***Union of India V/s. W.N. Chadha***[4].

14. The Hon'ble Supreme Court had an occasion to deal with an identical issue in the case of *Santhakumari and Ors. V/s. State of Tamil Nadu and Anr.* (supra), wherein it was contended on behalf of the proposed accused that they were prejudiced because they were not given an opportunity of hearing in the Revision Application of the Complainant against an order of the Magistrate dismissing his application under Section 156(3) of CrPC. It was further contended on behalf of the proposed accused that while exercising revisional powers under Section 401(2) of the CrPC, the High Court ought to have given such opportunity to the proposed accused and that they were prejudiced

[4] 1993 Supp (4) SCC 260

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by the direction to register FIR. It was in this factual backdrop that the Hon'ble Supreme Court observed as under:

> *"3. In support of the above contention, the appellants have placed reliance on a three-Judge Bench decision of this Court in Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel*[5]*, wherein in para 48, in the context of a revision against an order dismissing a complaint under Section 203 of the Code, the provisions of sub-section (2) of Section 401 of the Code were interpreted as under: (SCC p. 541)*
>
> > *"48. ... by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post-process stage."*
> >
> > *(emphasis supplied)*
>
> *4. The learned counsel for the respondents does not dispute that the prospective accused, namely, appellants herein, have not been served notice of the revision proceedings and the revision has been*

[5] (2012) 10 SCC 517

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allowed by the High Court with a direction to register first information report against them.

5. Having considered the submissions, since it is not in dispute that the proposed accused were not served notice of the revision proceedings, the order passed by the High Court is in the teeth of the provisions of sub-section (2) of Section 401 of the Code as interpreted by this Court in Manharibhai Muljibhai Kakadia (supra).

6. The decision in Manharibhai Muljibhai Kakadia (supra) has also been followed in Bal Manohar Jalan v. Sunil Paswan[6], wherein it was held: (Bal Manohar Jalan case(supra), SCC p. 644, para 9)

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

7. In view of the aforesaid, the appeal is allowed and the impugned order dated 18-11-20221 is set aside. The matter is remitted back to the High Court to decide the revision afresh in accordance with law."

15. The aforesaid judgment refers to a three Judge Bench decision of the Hon'ble Supreme Court in ***Manharibhai Muljibhai Kakadia V/s.***

[6] (2014) 9 SCC 640

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Shaileshbhai Mohanbhai Patel (supra), which has also been followed in ***Bal Manohar Jalan V/s. Sunil Paswan*** (supra).

16. The Petitioners have also placed reliance on the Full Bench ruling of the Allahabad High Court in the matter of ***Jagannath Verma and Ors V/s. State of UP and Anr.*** (supra) wherein the following questions fell for consideration in reference to the Full Bench:

> *"(1) Whether an order made under Section 156(3) of the Code rejecting an application for a direction to the police to register and investigate, is revisable under Section 397; and*
>
> *(2) If the answer to Question (1) is in the affirmative, then, whether in a revision filed against an order rejecting an application under Section 156(3), the prospective accused is also a necessary party and is required to be heard before a final order is passed."*

The relevant part of the ensuing discussion and the answer to the referenced questions are set out as follows:

> *58. As we have noted earlier, once an application has been filed before the magistrate upon the refusal of the police to investigate under Section 156(1), the Supreme Court has observed that the magistrate has an option of either proceeding under Section 156 (3) or under Section 200. If the magistrate were to proceed under Section 200 and the complaint is dismissed under Section 203, whether pre- or post-process, the persons who are suspected of having committed the crime have been held to be entitled to be heard in a revision by the complainant under Section 397 against the order of rejection. That being the position, there is no reason or justification to exclude an opportunity of being heard to the persons suspected of having committed the crime when a revision is filed under Section 397 against the rejection of an application under Section 156(3) for the registration of a case involving a*

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cognizable offence and for investigation by the police. The provisions of Section 401(2) have been held to require a hearing to a person suspected of having committed a crime when a criminal revision is laid against an order of dismissal of the complaint under Section 203, irrespective of the stage at which the complaint had been dismissed. Equally, there would be no justification to exclude the right of a hearing for, to use the language of Section 401(2), a hearing has to be afforded to the accused or other person and no order can be made to his prejudice unless he has an opportunity of being heard in his own defence.

59. The decision in Manharibhai Muljibhai Kakadia has been followed in a subsequent judgment of the Supreme Court in Mohit alias Sonu Vs State of Uttar Pradesh24. In that case, an order passed by the Additional Sessions Judge rejecting an application moved by the complainant under Section 319 of the Code was set aside by the High Court and the trial Court was directed to examine the accused-appellants. The accused were named in an FIR of having committed offences under Sections 147, 323, 504, 506 and 304 IPC. The Investigating Officer submitted a charge sheet against five accused leaving out the names of two accused who were the appellants before the Supreme Court. After the committal of the case for trial, the complainant in his examination-in-chief specifically stated the role of the appellants and moved an application under Section 319 for summoning them. The trial Court disposed of the application on the ground that the cross-examination had been not completed. This Court found no error in the order passed by the trial Court which had simply postponed the issue pending the cross-examination of the witnesses. A second application under Section 319 was thereafter rejected by the trial court, against which an application under Section 482 was allowed by this Court. This Court held that the trial Court was in error in rejecting the application for summoning the appellants and directed the trial Court to summon them under Section 319. The Supreme Court observed as follows:

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"25. In the light of the ratio laid down by this Court referred to herein above, we are of the considered opinion that the order passed by the trial court refusing to issue summons on the application filed by the complainant under Section 319 of CrPC cannot be held to be an interlocutory order within the meaning of sub-section (2) of Section 397 of CrPC. Admittedly, in the instant case, before the trial court the complainant's application under Section 319 of CrPC was rejected for the second time holding that there was no sufficient evidence against the appellants to proceed against them by issuing summons. The said order passed by the trial court decides the rights and liabilities of the appellants in respect of their involvement in the case. As held by this Court in Amar Nath's case, an order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order as contemplated under Section 397(2) of CrPC.

26. In the instant case as noticed above, when the complainant's application under Section 319 of CrPC was rejected for the second time, he moved the High Court challenging the said order under Section 482 of CrPC on the ground that the Sessions Court had not correctly appreciated the facts of the case and the evidence brought on record. The complainant wanted the High Court to set aside the order after holding that the evidence brought on record is sufficient for coming to the conclusion that the appellants were also involved in the commission of the offence.

27. In our considered opinion, the complainant ought to have challenged the order before the High Court in revision under Section 397 of CrPC and not by invoking inherent jurisdiction of the High Court under Section 482 of CrPC Maybe, in order to circumvent the provisions contained in sub-section (2) of Section 397 or Section 401, the complainant moved the High Court under Section 482 CrPC. In the event a criminal revision had been filed against the order of the Sessions Judge passed under Section 319 of CrPC, the High Court before passing the order would have given notice and opportunity of hearing to the appellants."

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62. The test as to whether a person is entitled to an opportunity of being heard in a challenge to an order passed in an original proceeding by another is not dependant necessarily on whether such a person had a right to be heard in the original proceeding. A person who is entitled to be heard in an original proceeding may legitimately assert a right to be heard when a substantive right created by an order passed in that proceeding is sought to be assailed before a higher forum at the behest of another person. But a right to be heard in revision is not excluded because a person who claims such a right was not entitled to be heard before the original order, which is assailed, was passed in the first instance or merely because a right of a hearing will not be available in the original proceedings on remand. The entitlement of a hearing at a particular stage has to be assessed independently, by considering the consequences of the proceeding in which a hearing is sought. Where a substantial right will be affected, a prejudice is likely to result or a result which has enured to the benefit of a person is sought to be negated, a hearing can legitimately be claimed when the order is assailed in a higher forum. Natural justice in our jurisprudence is not merely a matter of statutory entitlement but is an emanation or recognition of the constitutional right to fair procedure, fair treatment and objective decision making. Hence, a prospective accused is entitled to be heard in revision under Section 397 when an order rejecting an application under Section 156 (3) is assailed. For, such a person would have a legitimate entitlement to defend the order as having been correctly made. The fact that in the event of a remand by the revisional court to the Magistrate, for fresh consideration of an application under Section 156 (3), such a person has no right of a hearing does not preclude a right of a hearing in revision when the original order rejecting an application under Section 156 (3) is assailed.

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64. In view of the discussion above and for the reasons which we have furnished, we have come to the following conclusion:

(i) Before the Full Bench of this Court in Father Thomas, the controversy was whether a direction to the police to register a First Information Report in regard to a case involving a cognizable offence and for investigation is open to revision at the instance of a person suspected of having committed a crime against whom neither cognizance has been taken nor any process issued. Such an order was held to be interlocutory in nature and, therefore, to attract the bar under sub-section (2) of Section 397. The decision in Father Thomas does not decide the issue as to whether the rejection of an application under Section 156 (3) would be amenable to a revision under Section 397 by the complainant or the informant whose application has been rejected;

(ii) An order of the magistrate rejecting an application under Section 156 (3) of the Code for the registration of a case by the police and for investigation is not an interlocutory order. Such an order is amenable to the remedy of a criminal revision under Section 397; and

(iii) In proceedings in revision under Section 397, the prospective accused or, as the case may be, the person who is suspected of having committed the crime is entitled to an opportunity of being heard before a decision is taken in the criminal revision."

17. The reliance of Respondent No.3 on the judgment of the Hon'ble Supreme Court in the matter of *Union of India and Anr. V/s. W.N. Chadha* (supra) is misplaced. The observations of the Hon'ble Supreme Court pertained to the opportunity of being heard conferred on an accused person at the stage of investigation and not in the revisional jurisdiction, particularly when the Revision is at the instance of the Complainant whose application under Section 156(3) of CrPC has been dismissed.

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18. The observations of the Hon'ble Supreme Court in the judgments referenced above and the pronouncement of the Full Bench of the Allahabad High Court leave no room for doubt that the impugned order is in the teeth of the mandatory provisions of CrPC as set out hereinabove and deserves to be quashed and set aside.

19. Consequently, the FIR No.125/2025 dated 30.08.2025, which is also a direct consequence of the impugned order, must, as a corollary, be quashed and set aside.

20. In the light of the aforesaid facts and discussion, I pass the following order:

ORDER

(i) The impugned order dated 20.08.2025 passed by the learned Sessions Judge in Criminal Revision Application No.66/2024 is quashed and set aside.

(ii) The case is remanded back to the Additional Sessions Judge, Merces, sitting at Ponda. The Petitioners shall be added as party – Respondents in Criminal Revision Application No.66/2024.

(iii) The Additional Sessions Judge, Merces, sitting at Ponda, is directed to decide Criminal Revision Application No.66/2024 on its own merits, after giving due opportunity of hearing to the Petitioners and in accordance with law, as expeditiously as possible and not later than six weeks.

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(iv) The parties to appear before the learned Additional Sessions Judge, Merces, sitting at Ponda or the officiating/incharge Court on 10.04.2026.

(v) The FIR bearing No.125/2025 dated 30.08.2025 registered against the Petitioners under Sections 442, 427, 504, 379 r/w 34 of IPC at the instance of Ponda Police Station is quashed and set aside.

21. The Petition is allowed. Rule is made absolute in the aforesaid terms. It is clarified that this Court has not expressed any opinion on the merits of the case. All rights and contentions of all concerned parties are left open.

22. Office objections, if any, stand waived.

ASHISH S. CHAVAN, J.

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