

Amrut

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL MISC. APPLICATION NO.584 OF 2021 (Filing No.)**  
**IN**

~~**CRIMINAL APPEAL NO.437 OF 2021 (Filing No.)**~~

**CRIMINAL MISC. APPLICATION (MAIN) NO.437 OF 2021 (Filing No.)**

Correction carried out  
as per order dated  
27.11.2021.

TARUNJIT TEJPAL  
Son of Inderjit Tejpal,  
aged 57 years,  
residing at M-130,  
Greater Kailash 2,  
New Delhi, 110048

... Applicant

*Versus*

STATE OF GOA,  
Through C.I.D. C.B.,  
North Goa, Goa.

...Respondent

Mr. Amit Desai, Senior Advocate with Mr. Ankur Chawla,  
Mr. Raunaq Rao and Ms. Manali Kamat, Advocates for the Applicant.

Mr. Tushar Mehta, Solicitor General of India with Mr. Devidas J.  
Pangam, Advocate General of State of Goa, Mr. Shailendra Bhobe,  
Public Prosecutor, Mr. Francisco Tavora, Special Public Prosecutor,  
Mr. Pravin Faldessai, Additional Public Prosecutor, Mr. Rajat Nair,  
Mr. Kanu Agarwal, Mr. V. R. Solanki and Ms. Cyndiana Silva,  
Advocates for the Respondent.

**CORAM: REVATI MOHITE DERE &  
M. S. JAWALKAR, JJ**  
**DATE : 24<sup>th</sup> November 2021**

**ORAL ORDER ( Per Revati Mohite Dere, J.)**

**1. By this application, the applicant seeks the following relief:**

*“(a) Direct that the present case and all further proceedings therein of Leave to Appeal application shall be conducted “In Camera” as per Section 327 of Code of Criminal Procedure 1973.”*

2. The facts giving rise to the filing of the aforesaid application in brief are as under :-

The applicant was chargesheeted in connection with FIR No. 27/2013 for the alleged offences punishable under Sections 376(2)(f), 376(2)(k), 354, 354A, 354B, 341 and 342 of Indian Penal Code.

After a full fledged trial, the learned Additional Sessions Judge, Mapusa Goa, vide judgment and order dated 21.05.2021 passed in Sessions Case No.10/2014 acquitted the applicant of all the offences.

Being aggrieved by the said judgment and order of acquittal, the respondent/State of Goa (Through CID, CB,

North Goa) filed the aforesaid application seeking leave to file appeal.

Vide order dated 02.06.2021, this Court issued notice to the respondent (applicant). Pursuant to the notice issued to the applicant, the applicant appeared in the aforesaid proceedings.

In August 2021, the applicant filed the aforesaid Criminal Misc. Application seeking the aforesaid relief i.e. that the proceedings be conducted in camera considering the mandate of Section 327 Cr. P.C.

3. Mr. Desai, learned Senior Counsel for the applicant submits that the present proceedings i.e. leave to file appeal against the acquittal of the applicant and all further proceedings therein, be heard/conducted “in camera”, so as to avoid any prejudice to either, the prosecutrix or the applicant, as the adjudication of the said application will entail reading out the evidence led before the Trial Court. He submitted that there was strict adherence to the mandate of Section 327(2) Cr.PC, right

from the applicant's arrest, to bail i.e. pre-trial upto trial i.e. in the entire proceedings before the Trial Court and as such the said mandate under Section 327(2) be continued even in the present proceedings, as an appeal is a continuation of the proceedings of the original Court.

4. Learned Senior Counsel relied on the Eighty-Fourth Law Commission Report on 'On rape and allied offences: some questions of substantive law, procedure and evidence', in particular, Chapter 1, 1.5, Chapter 5, (III)- Trial in Camera, Points - 5.5, 5.6 to 5.12, in support of the submission to show, that the Law Commission had proposed that trials of rape and other allied sexual offences, must be conducted "in camera", so as to prevent the publicity of details of intimate character. He submitted that the Law Commission had observed that 'there is need for legislation to preserve the anonymity of the complainant and the accused in cases of rape and allied offences, so as to avoid embarrassment either to the victim or the accused'.

5. According to Mr. Desai, the applicant having been acquitted, there is a presumption of innocence in his favour which now stands fortified and hence, it is imperative that the present proceedings be conducted “in camera”. Learned Senior counsel relied on the judgment of this Court in *P Vs A & Ors* passed in *Ordinary Original Civil Jurisdiction Suit No.142 of 2021 dated 24<sup>th</sup> September 2021* with respect to the directions given in cases relating to sexual harassment of women (POSH Act), at workplace protecting both the parties. Mr. Desai also relied on the judgment of the Apex Court in *Nipun Saxena and another Vs Union of India and others*, reported in *(2019) 2 SCC 703*, in particular para 28 of the said judgment. Although, the said para deals with how the anonymity of the victim is to be maintained, according to Mr. Desai, the principle underlying the same also needs to be extended to the applicant, having regard to the applicant's acquittal from the said case. He submitted that Section 327(2) of Criminal Procedure Code is a facet of Article 21 of the Constitution, inasmuch as, it is necessary to protect the

reputation of both the parties. He submits that the right to privacy is now a facet of Article 21, the same having being recognised by the Apex Court in *K. S. Puttaswamy and another Vs Union of India and others reported in (2017) 10 SCC 1*. Mr. Desai submits that hence, it is imperative for the Court to protect the reputation, privacy and interests of both, the applicant and the victim.

6. According to Mr. Desai the applicant's right to argue the aforesaid application on the evidence adduced in the trial Court cannot be curtailed and that the applicant should be permitted to freely argue his case, without having to worry what would be said against him or the fear of publication, if due caution is not exercised. Mr. Desai submits that the applicant's right to defend himself cannot be taken away if he cannot freely argue his case. Learned Senior counsel submitted that an appeal being a continuation of the proceedings of the trial Court, the mandate of Section 327 Cr.PC, with respect to "in camera" proceedings,

will have to be complied with, in the present proceedings. Learned counsel relied on the judgment of *Malluru Mallappa (dead) through legal representatives Vs Kuruvathappa and others* reported in *(2020) 4 SCC 313* in support of the said submission.

7. According to Mr. Desai, the present proceedings can be considered as an “inquiry” warranting application of Section 327 of the Code, as leave is yet to be granted. He further submits that having regard to Section 6 of the Code, Section 327 will also apply to proceedings before the High Court, as the High Court, is also a 'Criminal Court'.

8. Mr. Desai submitted that no prejudice would be caused to the respondent/State, if the proceedings are held “in camera”. He submits that infact, once it is shown that the applicant's right under Article 21 is infringed, the applicant is not even required to urge prejudice.

9. On the other hand, Mr. Mehta, learned Solicitor General of India appearing for the respondent/State vehemently opposed the application. He submitted that Section 327 of the Criminal Procedure Code applies only to trial Court proceedings, having regard to the language used in the said section i.e. inquiry or trial. Mr. Mehta relied on the provisions of the Criminal Procedure Code, to show the scheme of the Code, as to when the trial commences and when trial ends. He submits that Section 327 comes under Chapter XXIV of the Criminal Procedure Code and that the trial ends when the judgment is delivered under Section 353 of Criminal Procedure Code (Chapter XXVII). He further submitted that although the trial is conducted “in camera”, Section 353 mandates that the judgment is pronounced in the open Court and that once the judgment is pronounced, not only is the judgment available in public domain, but even the evidence of witnesses set out therein, is out in public domain. Learned Solicitor General submits that Section 327 will not apply to the present proceedings i.e. proceedings before the Appellate Court.



As far as the observations made in the Law Commission Report is concerned, Mr. Mehta submits that the same cannot be considered inasmuch as, they are only recommendatory in nature and that too, it applies to proceedings before the trial Court. He submits that no ground is made out whatsoever for conducting the present proceedings “in camera” nor is it the mandate of Section 327, that appeals are to be heard “in camera”. He submits that in addition to Section 327(2) of the Code, there are other provisions under the criminal law i.e. 228A as well as, judgments of the Apex Court, which protect the identity of the victim not only during trial, but even thereafter, in all proceedings, including appeals. Learned Solicitor General submits that the application is misconceived and as such deserves to be dismissed. He submits that the judgments relied upon by the learned Senior counsel for the applicant, have no application to the facts in the present case.

**10.** Perused the papers. As noted above, the applicant was prosecuted in connection with FIR No. 27/2013 registered by the

CID, Crime Branch, Donapaula Goa. After investigation, chargesheet was filed as against the applicant. After charge was framed as against the applicant, evidence was led. Thereafter, the learned Additional Sessions Judge, Mapusa Goa, after hearing the parties, acquitted the applicant of all the offences under Sections 376(2)(f), 376(2)(k), 354, 354A, 354B, 341 and 342 of the Indian Penal Code.

11. Whether Section 327 of Criminal Procedure Code applies to the proceedings before the appellate Court is the short question. Before we advert to the said question, it would be apposite to reproduce Section 327 of Criminal Procedure Code.

The said Section reads thus:-

*“327. **Court to be open.** [(1)] The place in which any Criminal Court is held for the purpose of **inquiring into or trying any offence** shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:*

*Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or*

*any particular person, shall not have access to, or be or remain in, the room or building used by the Court.*

***(2)Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, [section 376-A, section 376-AB, section 376-B, section 376-C, section 376-D, section 376-DA, section 376-DB] or section 376-E of the Indian Penal Code (45 of 1860) shall be conducted in camera:***

*Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court:*

*[Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate].*

***(3)Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court.]***

*[Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.]*

( Emphasis supplied)

**12.** The words used in sub-section (1) of Section 327 of the Criminal Procedure Code are “*inquiring into or trying any offence*”. Sub-section (1) of Section 327 states that the place in which any Criminal Court is held for the purpose of 'inquiring

into or trying any offence' in an open Court. Sub-section (2) of Section 327 makes an exception to the principle of an open Court. It spells out the offences which are to be conducted "in camera". Sub-section (2) of Section 327 makes it abundantly clear, that notwithstanding anything contained in sub-section (1) of Section 327, the inquiry into and trial of rape or an offence under Section 376, [section 376-A, section 376-AB, section 376-B, section 376-C, section 376-D, section 376-DA, section 376-DB] or section 376-E of the Indian Penal Code shall be conducted "in camera".

13. Infact, in *Sakshi Vs Union of India and others*, the Apex Court held that the provisions of sub-section (2) of section 327 Cr.P.C. shall in addition to the offences mentioned in the sub-section, shall also apply to an inquiry or trial of offences under Sections 354 and 377 IPC.

14. The object of Section 327(2) is to ensure that the inquiry/trial before the Court being to elicit the truth, it is

absolutely necessary that the victim or the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Considering the nature of evidence that is required to be led in such cases, i.e. giving details of the acts committed including intimate details, it is imperative that the atmosphere is conducive for the victim to depose the same, far from the watchful eyes/gaze of the public, ruling out any discomfort whilst deposing. It is in keeping in mind the dignity and self-respect of the victim. The legislative intent is also to infuse confidence in the victim whilst deposing, which ultimately will have an impact on the quality of her evidence, which would ultimately assist the Courts in arriving at the truth and sifting truth from falsehood.

15. In *Sakshi Vs Union of India and others*, reported in *(2004) 5 SCC 518*, the Apex Court observed that the object of holding trial “in camera” is because of the nature of evidence that is led in such cases i.e. certain details of an intimate character

may have to be narrated in Court in such trials which may be embarrassing for the victim to narrate them in the full glare of publicity. It was observed that due to the said embarrassment, the victim may not be able to give all the factual details, as a result of which the cause of justice may suffer. Having regard to the same and fitness of things, the proceedings relating to rape cases were to be held “in camera”.

16. Infact, in *Nipun Saxena and another Vs Union of India and others*, the Apex Court in para 25 observed as under:-

*“25. Dealing with Section 327 Cr PC in Gurmit Singh Case (1996) 2 SCC 384, this Court held as follows:- ( SCC pp. 404-05, para 24)*

*“24.....It would enable the victim of crime to be a little comfortable and answer the questions with greater ease in not too familiar surroundings. Trial in camera would not only be in keeping with the self-respect of the victim of crime and in tune with the legislative intent but is also likely to improve the quality of the evidence of a prosecutrix because she would not be so hesitant or bashful to depose frankly as she may be in an open court, under the gaze of public. The improved quality of her evidence would assist the courts in arriving at the truth and sifting truth from falsehood.....The courts should, as far as possible, avoid disclosing the name of the*

*prosecutrix in their orders to save further embarrassment to the victim of sex crime. The anonymity of the victim of the crime must be maintained as far as possible throughout. In the present case, the trial court has repeatedly used the name of the victim in its order under appeal, when it could have just referred to her as the prosecutrix. We need say no more on this aspect and hope that the trial courts would take recourse to the provisions of Sections 327(2) and (3) CrPC liberally. Trial of rape cases in camera should be the rule and an open trial in such cases an exception.”*

Infact, the Apex Court in the same judgment took note of a contingency not envisaged by the law makers, in cases where an appeal is filed by the victims. Para 28 of the said judgment reads thus :

*28. Before parting with this aspect, we would like to deal with a situation not envisaged by the law makers. As we have held above, Section 228-A IPC imposes a clear-cut bar on the name or identity of the victim being disclosed. What happens if the accused is acquitted and the victim of the offence wants to file an appeal under Section 372 CrPC? Is she bound to disclose her name in the memo of appeal? We are clearly of the view that such a victim can move an application to the Court praying that she may be permitted to file a petition under a pseudonymous name e.g. ‘X’ or ‘Y’ or any other such coded identity that she may choose. However, she may not be permitted to give some other name which may indirectly harm another person. There may be certain documents in which her*

*name will have to be disclosed; e.g., the power of attorney and affidavit(s) which may have to be filed as per the Rules of the Court. The Court should normally allow such applicant to file the petition/appeal in a pseudonymous name. Where a victim files an appeal we direct that such victim can file such an appeal by showing her name as 'X' or 'Y' along with an application for non-disclosure of the name of the victim. In a sealed envelope to be filed with the appeal she can enclose the document(s), in which she can reveal her identity as required by the Rules of the appellate court. The Court can verify the details but in the material which is placed in the public domain the name of the victim shall not be disclosed. Such an application should be heard by the Court in Chambers and the name should not be reflected even in the cause list till such matter is decided. Any documents disclosing the name and identity of the victim should not be in the public domain."*

17. It is clear from the aforesaid, that the legislative intent of Section 327(2) of the Code, is to safeguard the dignity and interest of the victim, whilst deposing before the Court.

18. Whether the term "inquiry" in Section 372 as contended by Mr. Desai, learned counsel for the applicant, would apply to the present proceedings. The answer is an emphatic 'No'. The



term “Inquiry” is defined in Section 2(g) of the Code and reads thus :-

“(g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court”.

Therefore, an inquiry in respect of rape cases i.e. offences spelt out in Section 327(2) Cr.PC, shall necessarily be held “in camera”. The present proceedings can neither be said to be an inquiry nor a trial, by any stretch of imagination. Whether, the present proceedings is a 'trial' i.e. continuation of the proceedings, for the purpose of extending the benefit of sub-section (2) of Section 327 of the Code ? The answer is again 'No'. The language, purport and object of Section 327 is clear. “Inquiry” is meant to include everything done in a case by a Magistrate, whether the case has been challenged or not. The definition of “inquiry” in the Code is wide enough to include proceedings under the security sections. So are the proceedings under Section 107 Cr.PC. The word “inquiry” encompasses within its ambit every inquiry other than trial conducted by

Magistrate. Thus, the term “inquiry” has been used in a wider sense and within its ken it will include such proceedings, which do not require an adjudication upon a guilt or determination of an offence. It would also include proceedings which precede the stage of trial. The proceedings before the Committing Court are an “inquiry” which begins, not at a point of time when cognizance is taken, but with the filing of the chargesheet and continues till the case has been committed. Inquiry does not mean trial; and it follows that further inquiry does not mean further trial. The expression “trial” although has not been defined in the Code of Criminal Procedure, 1973. In Ferdico's Criminal Law and Justice Dictionary, “trial” has been defined as;

“The examination in Court of issues of fact and law in a case for the purpose of reaching a judgment. A trial begins when the jury has been selected in a jury trial, or when the first witness is sworn or the first evidence introduced in a non-jury-trial.”

Though, the word “trial” is not defined either in the Code or in the Act, it is clearly distinguishable from “inquiry”.

There is a difference between an “inquiry” and a “trial”. In criminal matters, inquiry is something different from a trial. Inquiry stops when trial begins, so all those proceedings before a Magistrate before framing the charge which do not result in conviction or acquittal can be termed as inquiry. Trial presupposes the idea of an offence but inquiry relates to offences and matters which are not offences viz., security proceedings and other inquiries relating to dispute about possession of immovable property, etc. Inquiry is the second stage of a criminal proceeding and is always to be conducted by a Magistrate and not by a police officer. Inquiry relates to proceedings prior to trial. The term “trial” as used in the Code pre-supposes the commission of an offence but an inquiry may cover inquiries into matters other than offences. The word “trial” is not defined in the Code but the definition of “inquiry” impliedly defines “trial” as every proceeding which is not an inquiry.

**19.** Thus, having regard to the aforesaid, we have no hesitation in holding that Section 327(2) of the Criminal Procedure Code

would only be applicable to an “inquiry” or “trial” and that the same will not apply to appeals, either appeal against conviction or an application seeking leave to file appeal against acquittal.

**20.** There is also no merit in the submission advanced by Mr. Desai, that Section 327 will have to be read with Section 6 of the Code, having regard to the scheme of the Code. Under Section 6 of the Code, four classes of Courts are created, namely, (i) Court of Sessions; (ii) Judicial Magistrate of the First Class and, in any Metropolitan area, Metropolitan Magistrates; (iii) Judicial Magistrate of the second class; and (iv) Executive Magistrates. The expression “Criminal Court” has been used in a number of Sections in the Code, although, it has not been defined specifically. The High Court is not created by the Code. Under the Constitution, it has powers of superintendence over all Courts and tribunals situated within its territorial jurisdiction. The expression "High Court" in Chapter XVIII and in Chapter XXIII of the Code, except in Sections 276 and 307, means the High

Court not being the Court of the Judicial Commissioner and includes such other Courts as the State Government may, by notification in the Official Gazette, declare to be High Courts for the purposes of the said two chapters. Where in the Code the expression "High Court" is used, it bears the one or the other of the aforesaid meanings.

**21.** As far as the contention of Mr. Desai, learned Senior counsel for the applicant, that Article 21 would have to be read in Section 327(2) of the Code, inasmuch as, the applicant's right to privacy and reputation is infringed, if "in camera" hearing is not afforded to the applicant in the present proceedings, we are afraid we cannot accede to the said submission. The apprehension of Mr. Desai that the applicant's right to defend himself is taken away, if he is not permitted to freely argue his case, for fear of publication, is also not justified. There is no embargo or restriction on the applicant to argue his case freely nor his right to argue his case can be curtailed. In proceedings such as these i.e.

rape cases in general, it is expected that all parties conduct themselves with dignity, sobriety and some sensitivity that is required, particularly, whilst reading evidence pertaining to intimate details. This, we think is not too much to expect from the Advocates appearing for the respective parties. Maintaining decorum in the courtroom is not merely a superficial means of protecting the image of lawyers and judges – but it is absolutely essential to the administration of justice.

**22.** As far as the judgment of this Court in *P Vs A & Ors* is concerned, the said case was under the POSH Act and pertained to allegations of sexual harassment of women at workplace. The said order was passed in a suit and as such the same will not have a bearing in the present proceedings.

**23.** Considering the aforesaid, the application being devoid of merits, stands rejected. Accordingly, the application stands disposed of.

24. All parties to act on the authenticated copy of this order.

**M. S. JAWALKAR, J**

**REVATI MOHITE DERE, J.**