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CRR-1874-2026

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

&

HON'BLE SHRI JUSTICE PUSHPENDRA YADAV

ON THE 6th OF MAY, 2026CRIMINAL REVISION No. 1874 of 2026*VIJAY SHARMA**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Abhay Jain - Advocate for the petitioner.

*Shri Deependra Singh Kushwah - Additional Advocate General for
respondent No.1/State.*

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ORDER

Per. Justice Pushpendra Yadav

The present revision has been filed under section 438 read with section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity "BNSS") challenging the order dated 10.02.2026 passed by the Special Court (Prevention of Corruption Act), Shivpuri, in case No.SC97/2025, whereby an application (I.A.No.2/2026) filed by the petitioner under Section 338(2) of BNSS has been rejected.

2 The brief facts of the case are that on 21.07.2025 21 elected councillors of the Municipal Council, Shivpuri, made a written representation to the District Collector, Shivpuri, regarding the condition of roads, non-existence of work as shown completed in the official records and



suspected irregularities in the use of municipal funds. On receiving the said representation, the District Collector directed the Sub-Divisional Magistrate, Sub-Division, Shivpuri, to conduct a detailed inquiry. After conducting the enquiry, the SDM submitted an enquiry report to the District Collector on 25-07-2025. In pursuance to the said enquiry report, under the direction of the District Collector, Shivpuri, FIR No. 504/2025 was registered at police station, Kotwali, Shivpuri, against Jitendra Parihar (Sub-Engineer), Satish Nigam (Assistant Engineer) and Arpit Sharma (Contractor of M/s. Shivam Construction) for the offence punishable under Sections 318(4), 316(5), 61(2), 337, 338, 336(3), 340(2) of BNS and Sections 8 & 12 of the Prevention of Corruption Act, 1988. After completion of investigation, charge-sheet was filed under Sections 318(4), 316(5), 61(2), 338, 336(3), 340(2) of BNS and Sections 13(1)(A), 8 of the Prevention of Corruption Act. At the time of framing of charge, the petitioner filed an application under Section 338 of BNSS to assist the prosecution. The said application has been rejected by the impugned order. Hence, the present revision.

3 The learned counsel for the petitioner submits the learned trial court has erred in rejecting the application filed by the petitioner solely on the ground that he does not fall within the category of a victim, thereby disentitling him from assisting the prosecution without appreciating that petitioner was the complainant whose representation led to initiation of enquiry and registration of FIR. The learned counsel for the petitioner further urged that present case relates with the misuse of public funds and corruption in the Municipal Council, Shivpuri, and the petitioner being elected



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Councillor, represents the interest of residents of Shivpuri, therefore, he is not an outsider but the original complainant. To bolster his submission, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Puran v. Rambilas**, (2001) 6 SCC 338 and **R.Rathinam v. State**, (2000) 2 SCC 391 .

4 Per contra, learned counsel for the State supported the impugned order and submits that only the Public Prosecutor can conduct the sessions trial. Therefore, the application filed by the petitioner has rightly been rejected by the learned Court below.

5 Heard learned counsel for the parties and perused the enclosed documents.

6 Before dealing with the rival submissions, it would be profitable to consider the relevant provisions of BNSS. Sections 248 and 338 of BNSS are as follows:-

"248. Trial to be conducted by Public Prosecutor. —In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

338. Appearance by Public Prosecutors.—(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal. (2) If in any such case any private person instructs his advocate 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 advocate 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."

Emphasis supplied

7 Plain reading of these provisions leave no iota of doubt that a Public Prosecutor is entrusted with the responsibility of conducting prosecution case



and role of the counsel for the private person is only to the extent of submitting written argument after the evidence is closed in the case under the instructions of Public Prosecutor with permission of Court. The right of a private individual to participate in the prosecution of a sessions trial is restricted and the prosecution is subject to the control of the Public Prosecutor. Section 248 mandates that prosecution be conducted by the Public Prosecutor and in view of Section 338 (2) of BNSS permission can be given to the private person to the extent of submitting written arguments after the evidence is closed in the case.

8 In the considered opinion of this Court, the aforesaid provisions do not permit the counsel of private person to make oral arguments and cross-examine the witnesses. He can only file written arguments under the instructions of Public Prosecutor with the permission of the Court but only after closing of the evidence in the case. In the present case, the petitioner has filed an application under Section 338(2) of BNSS at the stage of framing of charge, therefore, looking to the provisions of Section 248 read with Section 338(2) of BNSS, at this stage, we do not find any illegality in the order passed by the learned Court below.

9 So far as the contention of learned counsel for the petitioner that he was the elected councillor and on his representation enquiry was conducted which led to registration of FIR, therefore, the learned trial Court has erred in not treating him as a victim, is concerned, the Hon'ble Supreme Court in the case of **Rekha Murarka vs. The State of West Bengal and Anr.**, (2020) 2 SCC 474 considering the corresponding provisions of Sections 24, 225 and



301 of Cr.P.C. dealt with the issue of extent to which a victim's counsel can participate in the prosecution of a case. The relevant paras of the judgment are as under : -

"11. In light of this, we now proceed to consider the extent to which such assistance can be accorded. As mentioned supra, learned Senior Counsel for the Appellant has argued that there may be instances where the Public Prosecutor may fail to perform his functions properly, whether deliberately or due to oversight, which may obstruct justice instead of furthering it. To meet the ends of justice in such cases, he submitted that the role of the victim's counsel should not be limited to filing of written arguments as provided with respect to pleaders engaged by private parties under Section 301(2). Instead, it should extend to making oral arguments and examining witnesses as well. On a perusal of the arguments advanced and the decisions relied on by both the parties, we find that such a broad mandate for the victim's counsel cannot be given effect, as it is not rooted in the text of the Cr.PC."

10 The judgments relied upon by the petitioner are related with the cancellation of bail, therefore, looking to the peculiar facts and circumstances of the case, the same are distinguishable and are not of much assistance to the petitioner in the present case.

11 In view of the foregoing discussion, we do not find any illegality, perversity or impropriety in the impugned order warranting any interference. Consequently, this revision sans merits and is hereby dismissed.

(G. S. AHLUWALIA)
JUDGE

(PUSHPENDRA YADAV)
JUDGE