

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1190 OF 2015

Vijay s/o Ambadas Pawar,
Age-36 years, Occu:Agriculture,
r/o-Vadigudri, Tq-Ambad,
Dist-Jalna.

...PETITIONER

VERSUS

- 1) Amrut Vasantryao Deshmukh,
Age-Major, Occu:Service,
R/o-C/o-Phaltan Police Station,
Phaltan, Tq. & Dist-Satara,
- 2) The State of Maharashtra,
Through Gondi Police Station,
Gondi, Tq-Ambad,
Dist-Jalna.

...RESPONDENTS

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Mr.Santosh S. Jadhavar Advocate for
Petitioners.
Mrs.M.S. Patni, A.P.P. for Respondent No.2.

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CORAM: A.I.S. CHEEMA, J.

DATE : 22ND SEPTEMBER, 2015

ORAL ORDER :

1. Heard learned counsel for the Petitioner

and learned A.P.P. for State finally. The learned counsel submits that the Petitioner has filed complaint because of which Crime No.121 of 2002 was registered. After completing the investigation, Respondent No.1 who was Investigating Officer, filed charge-sheet against the accused in the said crime. It is stated that after recording evidence of some of the witnesses, it was revealed that Respondent No.1 had not discharged his duties in accordance with law and has favoured the accused persons during investigation. Consequently, Petitioner filed Application Exhibit 204/D seeking to add Respondent No.1 as accused in the said case. The J.M.F.C. after hearing the parties, passed an order rejecting the application on the ground that sanction to prosecute the Investigating Officer would be necessary.

2. The learned counsel for the Petitioner submitted that under the provisions of Section 319

of the Code of Criminal Procedure, it was necessary to proceed against the Investigating Officer.

3. Sub-Section (1) of Section 319 of the Code of Criminal Procedure reads as under:

"319. Power to proceed against other persons appearing to be guilty of offence.- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed."

4. It is clear that the above Section relates to a situation where while trial is proceeding and in the trial of the concerned offence it appears to the Court that there is yet another person who is not the accused but who appears to have committed offence for which that

person can be tried together with the existing accused, the Court can proceed against such person. If the allegation is that the Investigating Officer in the course of investigation helped the accused persons unlawfully, it would be another offence, if any, for which separate trial would be necessary. Under Section 223 of the Code of Criminal Procedure they would not be persons accused of the same or different offence committed in the course of the same transaction. The provisions of Section 319 of the Code of Criminal Procedure cannot be of help in the facts of the present matter.

5. As such, I do not find any reason to entertain the present Writ Petition. The points raised by the Petitioner are kept open. Writ Petition stands disposed of.

[A.I.S. CHEEMA, J.]