

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 36 OF 2002

The State of Maharashtra (At the instance of Wagle Estate, Police Station, Thane.)	..Applicant (Org. Complainant)
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V/s.

Ashok Arjun Jagtap @ Bhai Jagtap R/at L/29, Sector-7, Vashi, New Mumbai, Dist. Thane.	..Respondent (Org. Accused)
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Mrs. A.A. Mane A.P.P. for the Applicant-State.
None for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 28TH APRIL 2015.

ORAL JUDGEMENT

1. This Revision Application at the instance of the State takes exception to the order dated 19-11-2001 (below Exh. 20) passed by the learned Additional Sessions Judge, Thane in Sessions Case No. 553 of 1998. By the impugned order, the learned Sessions Judge has rejected the application Exh. 20 filed by the Applicant/State under section 319 of the Code of Criminal Procedure ('Code' for short).

2. The brief facts necessary for the disposal of the Revision Application may be stated thus.

That the complainant/PW.1 Vilas Baba Gadade is an employee of Vidyut Metallic Company Pvt. Ltd., Wagle Estate, Thane. Kamgar Sabha is a recognized Trade Union of the employees working in the said company. That union is headed by one Shri. R.J. Mehta. The complainant Vilas Gadade is the Secretary of the local Unit of Kamgar Sabha. According to the prosecution since the year 1995, another Trade Union, namely Bharatiya Kamgar Karmachari Mahasangh ('Mahasangh' for short) led by Ashok Arjun Jagtap @ Bhai Jagtap was trying to make inroads in the said company. According to the prosecution the Mahasangh is not a recognized union in the company. Further according to the prosecution, Shashikant Shinde, Ramesh Kadam, Sanjay Kadam and P.R. Patil who are the members of the Mahasangh, are antagonistics to the complainant Vilas Gadade. It is stated that on 1st April, 1998 at about 6.30 a.m. to 8.30 a.m. Shashikant Shinde and Sanjay Kadam along with other were standing at the entry gate of the

company. When the complainant came to the company at about 7.45 a.m. on his scooter, Shashikant Shinde and Sanjay Kadam indicated to the complainant and stated in vernacular “हाच तो गडदे त्याला निट पाहून घ्या.” This was informed by the complainant to the Senior Personal Manager and management of the company.

3. The incident in question has occurred on 6th April 1998. The complainant had gone to the company on his scooter at about 8.15 a.m. When he reached main gate of the company the accused Ramesh Kadam, Shashikant Shinde, Sanjay Kadam and P.R. Patil along with Bhai Jagtap were standing near a pan shop at the main gate of the company. They were also accompanied by 5 to 6 other unidentified persons. It is said that Shashikant Shinde pointed to the complainant and gave some abusive remarks, whereupon the accused along with 5 to 6 unidentified persons assaulted the complainant. They were armed with weapons such as Sickle (Koyta) and Chopper. The complainant was assaulted by these weapons whereupon he sustained bleeding injuries and he fell

down. At that time Shashikant Shinde, Bhai Jagtap and others fled away from the spot. It appears that some employees of the company took the complainant to the hospital. On the basis of the complaint lodged by Vilas Gadade, an offence being Crime No.I85/1998 was registered against the accused persons with Wagle Estate police Station, Thane. On completion of the investigation a charge sheet came to be filed against the accused Ramesh Kadam, Shashikant Shinde, Sanjay Kadam and P.R. Patil in which the name of the Bhai Jagtap was shown in the column no. 2. The charge sheet was filed under sections 307,341,147,148 and 149 of the Indian Penal Code. As the offence under section 307 of Indian Penal Code was triable by Sessions, the matter was committed to the Court of Sessions and was registered as Sessions Case No. 553 of 1998 which is pending on the file of the learned Additional Sessions Judge, Thane.

4. It appears that the learned Sessions Judge framed charge (Exh.3) against the accused Ramesh Kadam, Shashikant Shinde, Sanjay Kadam and Prashant Patil under relevant

Sections. Although the plea of only four accused was recorded, the contents of the charge, indicate that Bhai Jagtap is specifically named therein.

5. It appears that the evidence of the complainant Vilas Gadade (PW-1) was recorded on 19th November 2001 and during the course of the examination-in-chief an application Exh. 20 came to be filed on behalf of the State, purportedly under Section 319 of the Code. Praying for adding name of Ashok Arjun Jagtap @ Bhai Jagtap, as an accused in the Sessions Case. The learned Sessions Judge by an order dated 19th November 2001 has rejected the said application. Feeling aggrieved by the said order, the applicant-State is before this court, in the present Revision Application.

6. I have heard Smt.A.A.Mane the Additional Public Prosecutor for the state. The Respondent has not entered appearance though served.

7. It is submitted by the learned Additional Public

Prosecutor that the powers under section 319 of the Code are wide enough and in appropriate case the court can direct a person to be added an accused at any stage of proceedings. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of Rakesh V/s. State of Haryana (AIR-2001 SC 2521), in order to submit that the term "evidence" as used in Sub-section 319(1) of the Code does not mean "evidence" which is tested by cross-examination. The statement of prosecution witness recorded by the court can be prima facie material to enable the court to decide whether the person not arraigned before it, is involved in crime or not." The learned APP would submit that in the present case the learned Sessions Judge has noticed that the name of Bhai Jagtap was mentioned in the column no. 2 in the chargesheet. It is submitted that the learned Additional Sessions Judge has further noticed that there is nothing on record to show that the investigating agency had filed any final report under section 169 of the Code thereby dropping the name of Bhai Jagtap. The learned sessions Judge has also noticed that the FIR and oral statement of the complainant reflect the name of the Bhai Jagtap. It is thus

submitted that in the face of such material, the learned Sessions Judge could not have rejected the application. The learned APP has submitted that Criminal Application No. 1195 of 1998 decided on 18th June 1998 was as an application for Anticipatory Bail filed by Bhai Jagtap. It is submitted the said order cannot come in the way of adding Bhai Jagtap as an accused. It is therefore, submitted that the impugned order clearly demonstrates exercise of jurisdiction with material irregularity and needs interference.

8. I have considered the circumstances and the submissions made. With the assistance of the learned APP, I have perused the record of Sessions Case No. 553 of 1998 as also the impugned order passed. It would be significant to note that the Bhai Jagtap has been specifically named in the FIR. Not only that his name also figures in the chargesheet, although his name finds place in column no. 2 with a note that he has not been arrested in pursuance of the order passed by this court in Criminal Application No. 1195 of 1198. It would be necessary at this stage to reproduce the order passed in

Criminal Application No. 1195 of 1998 dated 18th June 1998 which was an application for Anticipatory Bail. The order reads as under:-

“After hearing Shri. Mundargi for the petitioner and Shri. Mhaisapurkar, APP for the State, and going through the papers of investigation, so far conducted by the police, there appears to be no material to connect the petitioner even prima facie, with the incident in question. In the circumstances, I find that following order would serve the purpose.

On the material existing today, the petitioner is not involved and, therefore, after getting further material, if police desires to arrest the petitioner, a clear notice of 48 hours in that behalf shall be given and till then he shall not be arrested. Accordingly, application is disposed of.”

9. After this order was passed the charge sheet is filed on 3rd August 1998 showing the name of Bhai Jagtap in column no. 2 as an accused. Not only this the charge Exh. 3 framed by the learned Sessions Judge contains the name of Bhai Jagtap. It would be necessary to reproduce the entire charge which reads as under:-

That you accused names above alongwith 5 to 6 unidentified absconding accused and accused Ashok Arjun Jagtap @ Bhai Jagtap, on 06-04-1998, at 08.15 hours, at Vidut Metalic Company, in front of Agra Gate, on Public Road, L.B.S. Marg, Wagle Estate, Taluka and District Thane,

within the jurisdiction of Wagle Estate Police Station, were the member of an unlawful assembly and in prosecution of the common object of such assembly namely assaulted complainant Shri. Vilas Baba Gadade, on vital parts of his body by means of chopper, sickle, committed the offence of rioting and thereby committed an offence punishable U/s. 147 of Indian Penal Code and within my cognizance.

Secondly

That you accused names above along with 5 to 6 unidentified absconding accused and accused Ashok Arjun Jagtap @ Bhai Jagtap, on the aforesaid date, time and place were the members of an unlawful assembly and were armed with deadly weapons viz. Sickle, chopper which is a weapon when used as a weapon of offence, attempted to murder of complainant Vilas Baba Gadade, and did in prosecution of the offence of rioting with the said weapons and thereby committed an offence punishable U/s. 148 of Indian Penal Code and within my cognizance.

Thirdly

That you accused names above along with 5 to 6 unidentified absconding accused and accused Ashok Arjun Jagtap @ Bhai Jagtap on the aforesaid date, time and place, were the members of an unlawful assembly, one of the member of which committed the offence of attempting murder of complainant Gadage, in prosecution of common object of that assembly to attempt to murder of complainant, which the member of that assembly knew to be likely to be committed in prosecution of that object) and you being a member of such assembly, at the time of committing that offence, are thereby U/s. 149 of the Indian Penal Code guilty of causing the said offence punishable U/s.

307 of the Indian Penal Code and within my cognizance.

Fourthly

That you accused names above along with 5 to 6 unidentified absconding accused and accused Ashok Arjun Jagtap @ Bhai Jagtap on the aforesaid date, time and place and in course of same transaction and in furtherance of your common intention, did an act to wit by means of sickle, chopper on the vital parts of the body of complainant Vilas Baba Gadade, with such intention or knowledge and under such circumstances that if, by that act, you had caused the death of complainant, you would have been guilty of murder and thereby each of you committed an offence punishable U/s. 307 r/w 34 of Indian Penal Code and within my cognizance.

Fifthly

That you accused names above along with 5 to 6 unidentified absconding accused and accused Ashok Arjun Jagtap @ Bhai Jagtap on the aforesaid date, time and place, and in course of same transaction, you wrongfully restrained complainant and thereby committed an offence punishable U/s. 371 of Indian Penal Code and within my cognizance.

Sixthly

That you accused names above along with 5 to 6 unidentified absconding accused and accused Ashok Arjun Jagtap @ Bhai Jagtap on the aforesaid date, time and place, were found in possession of sickle, chopper and used the same in the aforesaid commission of the offence in contravention of Section 7 of Arms Act thereby committed an offence punishable U/s. 25(1)(c) of Arms Act and within my cognizance.

Seventhly

That you accused names above along with 5 to 6 unidentified absconding accused and accused Ashok Arjun Jagtap @ Bhai Jagtap on the aforesaid date, time and place, were possessing weapons like sickle & chopper in contravention of prohibitory order passed by District Magistrate, and you thereby committed an offence punishable U/s. 135 r/w Section 37(1) of Bombay Police Act, and within my cognizance.

10. It can thus be seen that although in the title of the charge only the accused Ramesh Kadam, Shashikant Shinde, Sanjay Kadam and Prashant Patil have been named, the charge mentions the name of the Bhai Jagtap as one of the persons involved in the offence along with the other accused persons. It is trite that at the stage of framing of the charge, the court is expected to apply its mind and consider the material on record, in order to come to the conclusion whether there are sufficient grounds for proceeding against the accused within the meaning of Section 227 read with section 228 of the Code. Once the learned Sessions Judge has applied his mind and framed charge naming Bhai Jagtap as one of the persons involved in the offence, in the ordinary course of things, he ought to have been tried along with the other accused persons. There was even no

need of a formal appreciation being made in this regard. Be that as it may, it was during the course of the recording of the chief examination of the complainant that the application at Exh-20 came to be filed. A perusal of the examination-in-chief (Exh. 16) of PW.1 Vilas Gadade would show that apart from the other accused, he has named Bhai Jagtap. It is neither necessary nor proper at this stage to consider what is the exact role played by the alleged assailants, particularly in view of the fact that the charge is also under Sections 147 to 149 and alternatively under Section 34 of Indian Penal Code. It may also not be appropriate to examine the material in depth at this stage, else it may prejudice either the prosecution or the accused at the Trial. Suffice it to mention that the name of Bhai Jagtap figured in the FIR as also in the charge sheet (albeit in column no. 2). The charge framed by the learned Sessions Judge also shows the name of the Bhai Jagtap along with other persons and his name finds place in the examination-in-chief of the complainant PW-1. This aspect has also been accepted by the learned Sessions Judge. The fact that Bhai Jagtap has not been arrested in pursuance of the order

passed in Criminal Application No. 1195 of 1998 would be inconsequential. Even otherwise the said order was passed on 18th June 1998 and it would indicate that it was on the basis of the material available as on that date and the chargesheet is filed subsequently on 3rd August 1998. Once the learned Sessions Judge has accepted that there was sufficient material, the Sessions Judge could not have rejected the application by observing that the FIR is not pointing out anything incriminating against Bhai Jagtap. This part of the reasoning, in my considered view, runs counter to the charge which has been framed by the same Sessions Judge. In that view of the matter I find that the impugned order needs interference. In the result the following order is passed.

ORDER

- (i) The Criminal Revision Application is allowed.
- (ii) The impugned order dated 19-11-2001 passed below Exh.18 in Sessions Case No. 553 of 1998 is hereby set aside.
- (iii) The application Exh. 20 is hereby allowed. The learned Sessions Judge shall summon Ashok Arjun Jagtap @

Bhai Jagtap in Sessions Case No. 553 of 1998 and he shall be tried along with other accused in the case.

(iv) It will be open to the learned Sessions Judge to pass appropriate orders for bail in respect of the added accused in the facts and circumstances of the case and in accordance with the law.

(v) The Sessions Judge shall proceed to dispose of the Sessions Case as expeditiously as possible, on merits without being influenced by any of the observations herein.

(vi) The revision application is disposed in the aforesaid terms.

[C.V. BHADANG, J.]