

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

CRIMINAL REVISION APPLICATION NO.42 OF 2002

Mr.s Veena Asawani, @ Veena daughter of
Mohanlal Israni, aged about 42 years,
Indian Inhabitant, at present residing at
Room NO.608, Building No.6, Geeta Arcade,
Mira road, Dist. Thane.
(Through her brother Shri.Rajan Israni,
residing at A 1 Shanti Kunj, Old Nagardas Road,
Andheri (E), Mumbai 400 060.

.Applicant.

vs.

- 1) Shri. Ashok son of Pararam Panjwani,
Indian Inhabitant Residing in Flat NO.2.,1st floor in Building
ofg Chhatrapati Shivaji Co-op. Hsg. Society Ltd. Opp. Punjab
National Bank, Sadhu Vaswani Nagar, Thane 400 603.

2. State of Maharashtra,

...Respondents.

None for the Applicant.

Mrs. A.A.Mane, APP. for Respondent No.2.

CORAM : C.V. BHADANG, J.

DATE : APRIL 27, 2015.

ORAL JUDGMENT :

None for the applicant and the 1st respondent. Learned
APP. Mrs. A. A. Mane appears for the 2nd respondent.

2) This being a criminal revision application I have perused the impugned order and the revision application is being disposed of on merits.

3) The brief facts are that the applicant/original complainant had filed a private complaint against the first respondent and two others under Section 406, 420, 464, 465, 467 read with 114 of the I.P.C. being Criminal Case No.244/1991 on the file of the learned Chief Judicial Magistrate, Thane. It appears that the learned Chief Judicial Magistrate, Thane by an order dated 6 May 1991 had issued process against the accused under Section 406, 420, 467, 468, 471 read with 114 of the I.P.C. It further appears that the evidence on behalf of the complainant after charge was being recorded. At that stage an application Exh.121 came to be filed on behalf of the applicant seeking permission to examine one Rajan Mohanlal Israni who is the brother of the complainant. It was claimed that although the said witness has not been cited as such in the complaint, his evidence will be necessary to unfold the truth. On behalf of the applicant reliance was placed on the decision of the Hon'ble Supreme Court in **Jamura Rani vs. Krishna Kumar reported in 1993 Cr.L.J. 33** in order to submit that, notwithstanding that the witness is not mentioned in the list, he can be allowed to be examined. The learned Chief Judicial Magistrate, Thane found that as the evidence of the complainant

after framing of the charge was being recorded, application cannot be considered at this stage. In such circumstances, the application came to be rejected on 31 December 2001.

Feeling aggrieved this revision application is filed.

4) I have considered the circumstances and the grounds raised in challenging the impugned order. The only question which arises for determination, is as to whether the impugned order needs interference, in exercise of revisional jurisdiction of this court.

My answer is in the affirmative for the following reasons.

5) Under Section 244 of the Code of Criminal Procedure (Relating to trial of any warrant case instituted otherwise than police report) where the accused appears or is brought before the Magistrate, the Magistrate shall proceed to hear the prosecution and take such evidence as may be produced in support of the prosecution. Thus, Section 244 of the Cr.P.C., does not limit it to the witnesses who are shown in the witness list. The learned Chief Judicial Magistrate has also noticed the decision of the Hon'ble Supreme Court in the case of Jamura Rani (supra) in which it has been inter alia held that Section 244 (1) of the Cr.P.C. does not limit the evidence to the witnesses mentioned in the list appended to the complaint. The learned Chief Judicial Magistrate has

refused to allow the application Exh121 on the ground that evidence of the complainant was being recorded after framing of the charge. It was held that thus there was no question of allowing the applicant/complainant to examine any other witness (not cited in the complaint) at that stage. In my considered view, such a distinction could not have been made. Thus, I find that the revision application deserves to be allowed. In the result, revision is allowed. The impugned order dated 31 December 2001 below Exh.121 passed by the learned Chief Judicial Magistrate, Thane in Criminal Case No.244/1991 is hereby set aside. The application Exh.121 is allowed as prayed. Revision application is disposed of in the aforesaid terms.

(C.V. BHADANG, J.)