

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

CRIMINAL APPEAL NO. 193 OF 2014

Sameer Sharad Kulkarni

.. Petitioner

v/s.

The State of Maharashtra

..Respondents

Mr. Sameer S. Kulkarni, appellant in person

Ms. Rohini Salian, Spl. PP for NIA

Mrs. S.V. Sonawane, APP for the respondent State

**CORAM: RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 8th APRIL, 2015.

PC.

1. Heard appellant in person and Mrs. Salian, Special Public Prosecutor for the respondent no.2. By this appeal, the appellant is challenging order dated 17.01.2014 passed by the Special Judge under the MCOCA below Exh.1344 in MCOC Special Case No.01 of 2009, whereby the Special Judge dismissed the application filed by the aforesaid appellant for taking cognizance of the alleged illegal acts of the witness, Mr. N.D. Joshi as disclosed in the

statement under Section 164 of the Cr.P.C. Relying upon the decision of the Constitution Bench in the case of *Hardeep Singh V/s. State of Punjab & Anr. in Criminal Appeal No. 1750 of 2008.*, the appellant has urged that the witness Mr. N.D. Joshi, be arrayed as an accused in the said MCOCA proceedings.

2. Mrs. Salian, Special Public Prosecutor submitted that the charges against the accused in the said case are not yet framed and the trial is yet to commence and, therefore, the application is premature.

3. Having considered these rival submissions and having gone through the decision of the Constitution Bench cited by the appellant, we find no merit in the appeal.

4. The Constitution Bench of the Supreme Court in *Hardeep Singh (Supra)* has made following observations :-

“110. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial

inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the Court after the trial commences, for the exercise of power under Section 319 Cr.P.C. and also to add an accused whose name has been shown in column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial."

5. In the instant case, the accused is seeking direction to array one of the witnesses as an accused person. Needless to state that the witness cannot be arrayed as an accused solely on the basis of self incriminating statements made either under Section 161 or 164 of the Cr.P.C. The Court can invoke powers under Section 319 of the Cr.P.C. only when it appears from the evidence that such person has committed an offence for which he could be tried together with the main accused. In the instant case, the trial has not commenced and at this state, there is no evidence before the

Judge to decide whether the witness has committed any offence as alleged. The application is premature and was rightly rejected by the learned Special Judge.

6. In the facts and circumstances, we do not find any merit in the present Appeal and, therefore, the same is dismissed.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)