

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2795 OF 2014

Vilas Lingappa Jadhav .. Petitioner

Versus

Smt. Yallubai Parshuram Gaikwad & Anr. .. Respondents

Mr. Ritesh Thobde, Advocate for the petitioner
Smt. V. S. Mhaispurkar, APP for the respondent

CORAM:-M.L. TAHALIYANI, J.
DATED : 02/02/2015

P.C.

Admitted. By consent of the parties, heard finally.

2 The applicant had allegedly received stolen property from the accused, who are facing trial for the offence of house breaking and theft punishable u/s 452 and 380 of I.P.C. The learned Magistrate vide his order below Exh.66 (application filed by the complainant) dated 1st of April, 2013 directed that the applicant be added as one of the accused for having received stolen property from the main accused knowing that it was a stolen property. This order was passed by the Magistrate in exercise of his powers u/s 319 of Cr. P.C.

3 I have heard the learned counsel for the applicant and
the learned APP for the respondent State.

4 It appears from the order that the applicant was made
accused at the fag end of the trial. The only basis of making the
applicant as accused is the evidence of one Yallubai, who has
identified the idol of Goddess Laxmi, which was allegedly seized
from the possession of the applicant. It was the case of the
prosecution that the said idol and gold ornaments were stolen from
the house of the said Yallubai – PW 4. As far as the gold ornaments
are concerned, they could not be seized as the applicant had
allegedly melted ornaments and converted the same into a gold
ingot. Since what is stated by Mrs. Yallubai and the investigating
officer was already there in the charge-sheet, the learned Magistrate
could have added the applicant as an accused u/s 319 at an earlier
stage. It was unfair to add him as an accused at the fag end of the
trial.

5 After having gone through the evidence, I do not think
that it will serve the interest of justice. It will unnecessarily delayed
the proceedings of the case. I am, therefore, inclined to set aside the

order passed by the Magistrate. Moreover, Silver Idol, which has been identified by PW 4 in the Court was already shown to the witness in the office of Commissioner of Police. This is admitted by the witness in her evidence before the Court. As such there were no pressing reasons for exercising the powers u/s 319 of Cr. P.C. I am, therefore, inclined to grant the prayer of applicant.

6 Writ Petition is allowed. The order passed by the learned Judicial Magistrate, First Class, Solapur, below Exh.66 in RCC No. 835/2007 and the order passed by the learned Sessions Judge, Solapur in Criminal Revision Application No. 91 of 2013, are set aside. This petition is accordingly disposed of.

(JUDGE)

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