

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

CRIMINAL APPLICATION NO. 1014 OF 2014

Shrimant Irrappa Holim ... Applicant.

V/s.

State of Maharashtra ... Respondent.

Mr. Harshad E. Palwe, Advocate for the Applicant.

Mr. D. R. More, A.P.P. for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 09th JUNE, 2015

P.C. :

1 Admit. Heard finally.

2 Heard the learned counsel appearing for the Applicant and learned additional public prosecutor for the Respondent.

3 Applicant - Shrimant Irrappa Holin is the complainant and victim in the crime registration No. 476 of 2007 of Nashik Road Police Station which was registered against about 25 persons for the offences punishable under sections 147, 148, 149 read with section 307 of the IPC. The names of Manohar Vithal Limbole and Prameshwar Manohar Limbole were mentioned in the FIR as members of the

unlawful assembly. This assembly of about 25 persons had allegedly assaulted the applicant with intention and under such circumstance that had the applicant been killed, the members of the said unlawful assembly would have been guilty of offence of murder. However, after completion of the investigation, the names of the said two persons were not mentioned in the charge-sheet as the accused.

4 The applicant made an application before the trial Judge for adding the said two persons' name as accused in the charge-sheet. The said application was rejected on the ground that the learned trial Judge could do so under section 319 of the Cr.P.C. only after recording of the evidence. The learned Sessions Judge had expressed the view that the application was premature and could not be considered, as no evidence had been recorded. The learned Advocate Mr. Palwe for the applicant has submitted that the view expressed by the learned Sessions Judge is not correct in view of the judgment of the Hon'ble Supreme Court reported in 2014 (3) SCC 306 in the matter of **Dharam Pal & Ors. vs. State of Haryana & Anr..**

5 I have gone through the judgment and order of the learned Sessions Court. It appears that the learned trial court was aware of the judgment of the Hon'ble Supreme Court and he has also referred the said judgment. It appears that the learned Sessions Judge has based his judgment on the head

note prepared by the editor. It need not be mentioned here that the learned Judge was not supposed to base his judgment on the head note and he was supposed to go through the text of the entire judgment to decide the issue raised before him. Para 40 of the said judgment was relevant for the purpose of deciding the application before the learned Sessions Judge. Para 40 of the judgment reads as under :

“40. In that view of the matter, we have no hesitation in agreeing with the view expressed in Kishun Singh Case that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.”

6 The learned Sessions Judge has turned down the prayer of the applicant on the ground that the names of the said two persons were not mentioned in column 2 of the charge-sheet. Column 2 of the charge-sheet is meant for mentioning the names of the persons who have not been charge-sheeted. It should have been noted by the learned trial Judge that the names of Manohar Vithal Limbole and Prameshwar Manohar Limbole were mentioned in the FIR

though they had not been charge-sheeted. Therefore, it follows that the police were under obligation to mention their names in column 2. The learned Judge could not have rejected the prayer of the applicant only because the police failed to mention their names in column 2 of the chargesheet. Though the names of those two persons have not been mentioned in column 2 of the chargesheet, they are the persons not named as offenders. As such, if the names of said two persons were mentioned in the FIR and despite that if they are not chargesheeted, the Judge can always examine as to whether he can take cognizance under section 193 of the Cr.P.C..

7 In the circumstances, it is necessary that the learned trial Judge shall hear the application afresh to decide as to whether Manohar Vithal Limbole and Prameshwar Manohar Limbole were involved in the alleged offence. But once the learned trial Judge comes to the conclusion that their complicity is there in the alleged offence, he has to take cognizance under section 193 of the Cr.P.C., irrespective of the fact as to whether their names had been mentioned in column 2 or not.

8 The order passed by the learned Sessions Judge, Nashik below Exh. 32 in Sessions Case No. 92 of 2008 is set aside.

9 Application Exh. 32 shall be heard afresh to examine the complicity of the said two persons in the offence and decide as to whether the said two persons were involved in the alleged offence.

10 The learned trial Judge/ Sessions Judge shall take further decision after deciding the above said issue in question.

11 The present application stands disposed of.

(JUDGE)

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