

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 32 OF 2016

The State of Maharashtra,
Through Palam Police Station,
District Parbhani

.. Petitioner

VERSUS

Ganesh Kishan Poul,
Age : 38 years, Occu.: Agri.,
R/o : Farkanda, Tq. Palam,
District - Parbhani

.. Respondent

Mr. A.R. Kale, A.P.P. for the petitioner/State
Mr. M.P. Kale, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 26/02/2016

ORAL ORDER :

Rule. Rule made returnable forthwith. The petition is heard finally with consent of both sides.

2. The prosecution case would show that earlier the complaint was filed by the complainant/PW2, on the basis of which entry regarding non-cognizable case was taken. As regards the same incident, later-on, she

made a statement before the Police Inspector, on the basis of which crime no. 54 of 2012 for the offences punishable under section 294, 323, 504 and 506 of the Indian Penal Code and under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1988 was registered at Palam Police Station, District – Parbhani and the chargesheet is filed. Special Case (Atro) No. 8 of 2012 is registered, in which the impugned order dated 06/10/2015 is passed by the learned Additional Sessions Judge, Gangakhed.

3. It is the case of the State that inadvertently the complainant was not shown in the witness box, the FIR, on the basis of which the chargesheet is filed and the criminal case is pending. She had only pointed and proved the earlier complaint. In the circumstances, the State prayed for recall of the witness by invoking the powers under section 311 of the Code of Criminal Procedure.

4. Mr. M.P. Kale, learned counsel for the respondent opposed the plea. He submits that the order

of the learned Additional Sessions Judge rejecting the application is correct. PW2, in-fact, has deposed in her examination-in-chief that, after filing of the first complaint, which was treated as non-cognizable case, she was not called thereafter by the Police (paragraph no.3 of the examination-in-chief). He therefore submits that only to fill up the lacuna in the prosecution case, the said exercise is carried.

5. Upon hearing both sides, in my view, since the very basis of the proceedings is the next of the FIR, on the basis of which the offence was registered, this is a case, wherein the learned Additional Sessions Judge ought to have exercised his powers under section 311 of the Code of Criminal Procedure. In the result, the following order:-

6. Writ Petition is allowed.

7. The impugned order dated 06/10/2015 passed by the learned Additional Sessions Judge, Gangakhed in Special Case (Atrocity) No. 8/2012 is hereby set aside.

. Instead, permission to recall the witness is hereby granted only to the extent of necessary statement for proving the FIR and the contents thereof.

8. Rule is accordingly made absolute in the above terms.

[M.T. JOSHI]
JUDGE

arp/