

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 770 OF 2015**

GULAB S/O DULBAJI INGOLE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for petitioner : Mr. S.K. Adkine

APP for Respondent/State:Mr.D.R. Kale

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CORAM : S.S. SHINDE & K.K. SONAWANE, JJ.**Dated: November 28, 2016**

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PER COURT :-

Heard the learned counsel appearing for the petitioner and the learned A.P.P. appearing for the Respondent/State.

2. This Petition is filed with the following prayers :-

“(B) Quash and set aside Judgment and order dated 24.2.2012 and 09.03.2015 in M.A. No. 170/11 and Criminal revision No. 14/2013 passed by J.M.F.C. & Sessions Judge, Basmathnagar and Respondent Nos. 5 to 11 may be added as accuse in Crime

No. 56/2011 registered with Police Station Hatta, Tq. Basmath under Sections 302, 376, 201 and 34 of the I.P.C.

(C) Direction may be issued to respondent No.1 to 4 about Adding accuse (respondent 5 to 11) in crime No.56/2011 dated 01.04.2011 registered with police station Hatta u/s 302, 376, 201 and 34 of I.P.C.

(D) Direction may be issued to respondent No.1 to hand over the investigation charge to C.B.I. or C.I.D. Department for investigation in Crime No. 56/2011 dated 1.4.2011 registered with police station Hatta u/s 302, 376, 201 & 34 of I.P.C."

3. It appears that the petitioner filed Criminal Misc. Application No. 170/2011 before the 2nd Joint Judicial Magistrate, First class, Basamatnagar seeking directions to the Police to investigate under Section 156(3) of the Code of Criminal Procedure.

4. It appears that the petitioner was not

satisfied with the investigation caused by the Investigating Officer in Crime No.56 of 2011 registered with Police Station Hatta, Tq. Basmath for the offence punishable under Sections 302, 376, 201 and 34 of the I.P. Code. Therefore, the Criminal Misc. Application No. 172/2011 was filed by the petitioner. The learned Magistrate by reasoned order rejected the said application. It is observed in the order that the alleged offence took place on 28th March, 2011 and the complaint is filed on 27th June, 2011. It is shown that during the interregnum, the petitioner approached the respondent authorities. The learned Magistrate has adverted to the contents of the letter dated 18.04.2011 addressed to the authority and recorded the conclusion that, in the said letter, the complainant did not point out all the accused as culprits. The Magistrate has adverted to the Report at Exhibit-5 submitted by the concerned Police Officer, wherein it was stated that, no case is made out against the accused persons. By the time, the Magistrate disposed of the complaint, the Police did submit the charge-sheet against Amol Bagate, Deepak Manwate and Bhojaji Alne and the case was registered as R.C.C.

No. 178/2011. The learned Magistrate has adverted to the allegations in the complaint and also the evidence given by the complainant and all other material placed by the complainant and reached to the conclusion that, the application is devoid of any substance and accordingly, the said application was rejected on 24th February, 2012. Being aggrieved by the said order, the petitioner filed Criminal Revision No.14/2013. The Revisional Court by detailed order rejected the said Revision Application on 9th March, 2015. The said order is under challenge in this Criminal Writ Petition.

5. It appears that the petitioner has also sought directions to Respondent No.1 to hand over the investigation to C.B.I. or C.I.D. of Crime No. 56/2011, and therefore, this matter is placed before this Court.

6. We have considered the submissions advanced by the learned counsel appearing for the petitioner and the learned A.P.P. appearing for the Respondent/State, and also perused the investigation papers, which are made available for perusal. The learned A.P.P. informs this Court that, the trial has

already progressed and some of the witnesses have been examined. In that view of the matter and keeping in view the reasons assigned by the trial Court and the fact that the trial is in progress, in the peculiar facts and circumstances of this case, ends of justice would be met, in case the prosecution agency/petitioner is permitted to invoke the provisions of Section 319 of the Code of Criminal Procedure before the trial Court before whom the trial is pending. The learned counsel appearing for the petitioner also submits that the petitioner is satisfied in case the trial Court is directed to invoke the provisions of Section 319 of Code of Criminal Procedure, so as to appreciate the contentions of the petitioner.

7. In the light of discussion in foregoing paragraphs, we grant liberty to the prosecution agency and also to the petitioner to draw attention of the trial Court to the provisions of Section 319 of Code of Criminal Procedure. In the light of the evidence collected by the prosecution agency and also keeping in view the statement of the petitioner, the trial Court may pass appropriate orders, keeping in view the

provisions of Section 319 of the Code of Criminal Procedure. The Petition is partly allowed and the same stands disposed of.

8. The parties shall act upon authenticated copy of this order.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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