

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.805 OF 2016

Jagannath Dattu Torane]
Age 45 Years,]
R/at Paniv, Taluka Malshiras,]
Dist. Solapur, PIN 413 113.] Petitioner

Versus

1. State of Maharashtra]
(At the instance of Sr. P.I. of]
Akluj Police Station)]
]]
2. Prakash Shamrao Patil]
Age 50 Years, Occu. Agriculturist,]
R/at Paniv, Tal. Malshiras,]
Dist. Solapur] Respondents

Mr. Niranjana Mundargi and Mr. Vaibhav Dhaije,
i/by Mr. Devidas J. Jadhav, for the Petitioner.

Mr. H.J. Dedia, A.P.P., for Respondent No.1-
State.

Mr. Shirish Gupte with Mr. Shekhar Ingawale, Ms.
Supria Kak and Mr. Tejas Hilge, for Respondent
No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 1ST MARCH 2016.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith, by consent. Heard learned
counsel for the parties.

2. This Writ Petition is preferred by the Original Complainant

challenging the order passed by the Additional Sessions Judge, Malshiras, Dist. Solapur, in Special Case No.13 of 2013, rejecting his application filed at Exhibit-151 under Section 319 of Cr.P.C. for impleading Respondent No.2 "Prakash Shyamrao Patil" as Accused in the case.

3. It is submitted by learned counsel for the Petitioner that, in the present case, there are in all 25 accused persons. The Charge-Sheet was filed against them for the various offences punishable under Sections 436, 324, 338, 337, 147, 148, 143 and 149 of IPC on the basis of the F.I.R. No.49 of 2013 lodged by the present Petitioner on 19th March 2013 at Akluj Police Station, Dist. Solapur. The offence under Sections 3(1)(10) and 3(2)(4) of Prevention of Scheduled Castes and Scheduled Tribes Atrocities Act was also registered under the said F.I.R. It is urged that in the F.I.R. and also in the statements of the eye-witnesses, namely, PW-3 Vikas Namdeo Torane and PW-7 Sunil Namdev Torane, it was clearly stated that the co-accused, while committing the assault on the Petitioner and other injured, had stated that Respondent No.2 "*Prakash Bapu*", whose name is sought to be added as an additional accused, had told them not to leave the Petitioner and other injured witnesses and assault them (*marun todun taka*) and he will take care of the matter (*je kay ghadel te me pahato*).

4. It is urged that, not only in the F.I.R. and the statements recorded by the Police under Section 161 of Cr.P.C. the name of Respondent No.2 as instigator is brought on record, but also in the evidence recorded before the Court, the Petitioner, who is the Original Complainant, and two eye-witnesses, namely, PW-3 Vikas Namdeo Torane and PW-7 Sunil Namdev Torane, have deposed about this instigation and hence it is urged that there was sufficient material before the Trial Court for implicating Respondent No.2, who is the husband of other co-accused Shrilekha Patil and father of co-accused Abhishek Patil, as additional accused in the case, especially, in the background of the fact that there were earlier disputes and inimical relations between the parties pertaining to the landed property.

5. According to learned counsel for the Petitioner, the Trial Court has committed an error in rejecting this application only and mainly on the ground that there is delay in filing such application. It is urged that in Para No.7 of the impugned order, the Trial Court has observed that, "if Prakash Shyamrao Patil is impleaded as an accused in this case, entire trial will have to be tried as denovo, by recalling all the witnesses; it will further delay entire proceedings; the same cannot be allowed at the whim of Complainant Jagannath Dattu Torane, who is not vigilant and prompt

enough to take such step at an earlier stage. As per the submission of learned counsel for the Petitioner, when there was sufficient material in the complaint and also in the statements of the witnesses recorded by Police, it was the duty of the Investigating Officer himself to implead Respondent No.2 as an accused. If the Investigating Officer has not done so, then it was the duty of the prosecution to do so. However, the prosecution has also not done so and, therefore, ultimately it was for the Petitioner, who is the Original Complainant and aggrieved by the entire incident, to do so and hence he has taken his step. Therefore, as the ultimate object of any criminal trial is to achieve the substantive cause of justice and not only to dispose of the case, the learned Trial Court should have allowed this application and impleaded Respondent No.2 as an accused. He should not have been allowed to escape from the clutches of the Court, merely because it may entail a denovo trial by recalling of all the witnesses.

6. The learned counsel for Respondent No.2 has supported the said order by pointing out that no illegality, impropriety and, much less, perversity can be noticed from the order of the Trial Court and hence, according to him, no interference is warranted therein.

7. Perusal of the impugned order of the Trial Court reveals that the Trial Court has not only considered the factor of delay in preferring the application, but it has also considered that there was no sufficient material in the form of evidence or otherwise brought on record to implead Respondent No.2 as an additional accused under Section 319 of Cr.P.C. The Trial Court has, in Para No.6 of its order, considered the fact that it was a general statement made by the Petitioner and other two eye-witnesses that it was Respondent No.2, who has told them not to allow the Petitioner and other witnesses to escape, to kill them and he will take care of the matter. The Trial Court also considered that there was nothing on record to show which accused uttered this particular sentence. The Trial Court further considered the fact that there is no specific evidence indicating the offence of criminal conspiracy. Thus, the Trial Court has not only considered the aspect of delay in preferring the application, but it has also considered the fact that though this material was available since beginning from the stage of investigation, neither the Investigating Officer found any further material to implead Respondent No.2, nor the prosecution found that the said material was sufficient to implead him subsequently in the course of trial. Therefore, the impugned order of the Trial Court cannot be called as suffering from any illegality.

8. Moreover, as pointed out by learned counsel for Respondent No.2, the only material on which the Petitioner is harping is the statement of the co-accused. Now on the basis of such statement, it would be rather difficult to add another person as accused. Especially, in the instant case, where, admittedly, there was a background of previous enmity and civil disputes also, the statement of the co-accused cannot be called as relevant material to bank thereupon to issue the process against a new accused, who is tried to be impleaded, that too during the course of the trial.

9. Secondly, since beginning, the Investigating Officer did not find any substance in the theory of criminal conspiracy and, therefore, that charge is not at all impleaded and in such situation, it would be an abuse of the process of law to implead some new person, that too at the fag-end of the trial, when now the case is fixed for recording of the statements of the accused persons under Section 313 of Cr.P.C. Earlier also, the Petitioner was having several opportunities to call for further investigation under Section 173(8) of Cr.P.C., if the aspect of criminal conspiracy was not investigated by the Police, according to him. He could have earlier also applied for the impleadment of this accused, provided, there was sufficient material. The prosecution itself is not finding that there is any such

material against Respondent No.2.

10. It is pertinent to note that the law in respect of exercise of powers by the Court under Section 319 of Cr.P.C. is now fairly well settled by the landmark decision of the Constitution Bench in ***Hardeep Singh Vs. State of Punjab and Ors., along with connected matters, (2014) 3 SCC 92***, wherein it is held that, the degree of satisfaction for invoking Section 319 should be of more than a prima facie case. It requires much stronger evidence than mere probability of his complicity.

11. Thus, the considerations, which are applicable at the initial stage of issuing process against Original Accused and the considerations which are to be applied when the powers and discretions under Section 319 of Cr.P.C. are to be exercised, are different. The standard of material, which is required for exercising the powers under Section 319 of Cr.P.C. is much higher, which is conspicuously lacking in the present case and hence, the Trial Court has rightly rejected the application.

12. The Writ Petition holds no merit and hence stands dismissed. Rule is discharged accordingly.

[DR. SHALINI PHANSALKAR-JOSHI, J.]