

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 514 OF 2016**

Pradeep Narottamdas Harsora & Anr.	...Petitioners
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. N. K. Thakre i/b Mr. Ganesh Bhujbal for the Petitioner

Ms. M. M. Deshmukh, A.P.P for the Respondent-State

Mr. S. R. Karnik for the Intervener

***CORAM : RANJIT MORE &
REVATI MOHITE DERE, JJ.***

TUESDAY, 20th DECEMBER, 2016

P.C. :

1. Heard learned Counsel for the petitioners, learned A.P.P and Mr. Karnik for the intervener.

2. The petitioners are original accused Nos. 1 and 2. C.R. No. 276 of 2004 has been registered at D.B. Marg Police Station, Mumbai, as against the petitioners, for the offences punishable under Sections 467, 471, 420 r/w 34 of the Indian Penal Code. After completion of investigation, charge-sheet was filed as against the present petitioners in the Court of the

learned Metropolitan Magistrate's 18th Court, Girgaum, Mumbai, and was numbered as CC No. 108/PW/2005.

3. Charge was framed against the present petitioners on 18th November, 2008 and thereafter PW No. 1 was examined by the prosecution between 2009 and 2010. The petitioners thereafter started cross-examination of PW No. 1. On 19th October, 2011, the prosecution preferred an application below Exhibit 87 under Section 319 of Cr.P.C. praying that one Ms. Anita M. Harsora be impleaded as an accused for the same offences and be tried alongwith the petitioners. The said application was allowed by the learned Metropolitan Magistrate vide order dated 30th March, 2012 and fresh charge was framed against all the 3 accused, for the same offences. Ms. Anita Harsora challenged the said order in the Sessions Court, and thereafter, in this Court. This Court vide order dated 18th February, 2013, was pleased to direct the trial Court to consider the 319 application, after P.W. 1's cross-examination was over. Thereafter, petitioners completed the cross-examination of the complainant. Prosecution thereafter, again preferred an application under Section 319 for adding Anita Harsora as an accused, which was allowed by the trial Court

on 15th February, 2014. On 2nd February, 2015, charge was framed against all the 3 accused.

4. As Section 319 Cr. P. C. requires *de novo* trial against the added accused, PW No. 1 was re-examined by the prosecution and the added accused was allowed to cross-examine the said witness. At this stage, the petitioners have approached this Court challenging the procedure adopted by the Metropolitan Magistrate's Court.

5. Learned Counsel submits that there cannot be two set of evidence. He further submits that the procedure adopted by the Metropolitan Magistrate is contrary to the provisions of Article 21 of the Constitution of India.

6. Learned A.P.P and learned Counsel for the intervener opposes the petition. They submit that the procedure adopted by the learned Metropolitan Magistrate is in accordance with the provisions of Section 319 of Cr.P.C. They submit that in any case, there is no prejudice to the petitioners.

7. Having considered the submissions, we find no merit in the petition. The PW No. 1 was re-examined by the prosecution and the added accused i.e. Anita Harsora was allowed to cross-examine her. In the light of provisions of Section 319 Cr. P.C., as interpreted by the Division Bench of the Supreme Court in ***Shashikant Singh v. Tarkeshwar Singh & Anr.***¹ and the Constitution Bench Judgment of the Apex Court in the case of ***Hardeep Singh v. State of Punjab & Ors.***², we find no infirmity in the procedure adopted by the trial Court. We also find that no prejudice is caused to the petitioners.

8. In the above circumstances, we are not inclined to interfere in this writ petition. The same is accordingly dismissed.

REVATI MOHITE DERE, J.

RANJIT MORE, J.

1 AIR 2002 SC 2031

2 AIR 2014 SC 1400