

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO.268 OF 2016

The State of Maharashtra ... **Applicant**

V/s.

Madhav Babasaheb Mate ... **Respondent**

.....

Mr.P.H.Gaikwad-Patil, APP for the Applicant/State.

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CORAM : A. M. BADAR J.

DATED : 17th JANUARY 2017.

P.C . :

1 By this application, revision petitioner/State is challenging the order below Exh.38 i.e. the application under Section 319 of the Code of Criminal Procedure praying for joining one Archana Madanrao Bhoite @ Archana Santosh Kale as accused for trial together with the charge-sheeted accused.

2 Heard the learned Additional Public Prosecutor appearing for the revision petitioner/State. He argued that learned trial Court has not permitted the prosecution to examine 10 witnesses. He argued that statement of witnesses recorded by the Investigating Officer shows complicity of Archana daughter of Madanrao Bhoite @ Archana wife of Santosh Kale in the crime in

question and, therefore, the learned trial Court ought to have allowed the application by passing order under Section 319 of the Code.

3 Perused the copy of the application at Exh.A which was moved by the prosecution before the learned Additional Sessions Judge, Barshi and which came to be marked as Exhibit 38. Averments in the said application are to the effect that supplementary statements dated 09/05/2013 and 13/05/2013 of the victim and the statements of other witnesses recorded in connection with the crime makes it clear that there was illicit relation between wife of the victim and the charge-sheeted accused. It is further averred in the application that, therefore, wife of the victim ought to have been added as an accused. With this, the prosecution prayed for joining Archana daughter of Madanrao Bhoite @ Archana wife of Santosh Kale as accused No.2 for trial with charge-sheeted accused Madhav Babasaheb Mate.

4 The application at Exh.38 is purported to be one under Section 319 of the Code of Criminal Procedure. Section 319 of the Code of Criminal Procedure reads thus :

319. Power to proceed against other persons appearing to be guilty of offence :- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such

person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then –

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

It is seen from the provision of Section 319 of the Code of Criminal Procedure that the object behind enacting this provision is to see that no one who appears to be guilty escape the trial in respect of that guilt. However, this extraordinary power to proceed against any person not shown as accused can be exercised, if evidence shows involvement of that person in the commission of the crime. Section 319 of the Code of Criminal Procedure uses expression 'it appears from the evidence' and this indicated that the Court is enjoined to apply its mind to the

evidence that has come before it. Thereafter the Court is required to take a decision whether to exercise its powers of summoning such a person for arraigning him as an accused or not. Bare perusal of Section 319 of the Code of Criminal Procedure makes it clear that in order to apply the provisions of said Section, it is essential that the person other than the accused must be appearing to be guilty of the offence on the basis of evidence recorded in the course of inquiry or trial of the offence. In the case in hand, it is not shown that some evidence is recorded in the course of inquiry or trial of offence alleged in Sessions Case No.118 of 2014, which *prima facie* discloses complicity of the accused intended to be added for trial along with charge-sheeted accused. In fact, it appears that recording of evidence in the said Sessions Case bearing No.118 of 2014 did not commence before the trial Court.

5 In this view of the matter, application under Section 319 of the Code of Criminal Procedure moved by the learned prosecutor seeking to arraign Archana Santosh Kale as an accused for facing trial with the original accused was totally misconceived.

6 Be that as it may, one more aspect is required to be noted here. The learned Additional Sessions Judge, Barshi while rejecting an application under Section 319 of the Code of Criminal Procedure by the impugned order dated 27/01/2016 has not given any reason for rejection of the said application. The only order

which is passed by the learned Additional Sessions Judge, Barshi, according to the learned Additional Public Prosecutor, reads thus :

“Perused. Heard. Being devoid of merits rejected.”

This order is placed on record page No.10 and marked as Exh.B by the revision petitioner/State. The same is impugned in this revision petition.

7 It hardly needs to state that judicial order must be a well reasoned order. Recording of reason while passing any judicial order facilitate the exercise of its jurisdiction by the appellate or supervisory authority. Apart from this, recording of reasons by a Judge while passing judicial order serve a salutary purpose of excluding chances of arbitrariness. Exercise of supporting a judicial order with reasons ensures a degree of fairness in the process of decision making. Reasons given in support of the order ultimately passed needs to be clear and explicit so as to indicate that the Judge has given due consideration to the points in controversy. Need for recording of reasons is of an immense importance if the order is passed by the trial Court as the same is subject to an appeal or revision. It is a basis principle that the justice should not only be done but it must seen to have been done. For adhering to this principle recording of reason in support of a judicial order is must. In this view of the

matter, the learned Additional Sessions Judge, Barshi ought to have recorded reasons for rejection of said application under Section 319 of the Code of Criminal Procedure in order to enable the superior Court to ascertain what weighed in the mind of learned Additional Sessions Judge to reject the application. Recording of reasons is always considered as a sound practice necessary for deciding the legality of Order passed by the Court.

8 As it could not be pointed out to this Court that during the course of any inquiry or trial of an offence, it is apparent from the evidence on record that Archana Madanrao Bhoite @ Archana Santosh Kale has committed an offence requiring her to be tried together with the accused, the application at Exh.38 moved by the learned APP in Sessions Case No.118 of 2014 between the parties deserves to be rejected. The revision petition, therefore, also deserves to be dismissed.

9 However, the learned Principal District and Sessions Judge, Solapur is requested to bring this Order to the notice of the learned Additional Sessions Judge, Barshi for enabling him to take appropriate care in future. The Registry of this court to do needful by sending the copy of this Order to the learned Principle District and Session Judge, Solapur.

(A. M. BADAR J.)