

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4560 OF 2016

Mr. Abdul Hamid Aboobaker Coatwala ...	Petitioner
Vs.	
The State of Maharashtra ...	Respondent

Mr. Abdul Hamid Aboobaker Coatwala, Petitioner in person.
Mr. S.R. Agarkar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 10th April, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with the consent of the parties. The petitioner herein happens to be the original complainant in C.C.No.202/M/2010 pending before the Metropolitan Magistrate, 25th Court at Mazgaon. The learned Magistrate had recorded the verification statement of the complainant and thereafter had directed that the complainant may examine himself and his witnesses, if any. In fact, the prayer in the complaint was to issue directions under Section 156(3) of Cr.P.C. and in the alternative to issue process. It appears that the learned Magistrate was of the opinion that it will be a fit case for issuance of process and therefore had made verification statement of the complainant.

2. It is pertinent to note that till today the process is not issued

against the original accused Nos.1 to 4 as stated in the complaint. After the examination-in-chief of the complainant was recorded, the complainant-petitioner filed an application under Section 319 of Cr.P.C. seeking to add Advocate Golewala as one of the accused in the said criminal case. The learned magistrate had rejected the said application for an order dated 31.10.2015 below Exhibit 22.

3. Being aggrieved by the said order, the petitioner had filed Criminal Revision Application No. 71 of 2016 before the learned Sessions Court. The learned Sessions Court by an order dated 18.6.2016, had dismissed the Revision Application. Being aggrieved by the said order, the petitioner has filed the present Petition.

4. The petitioner also admits that the application seeking relief under Section 319 of Cr.P.C. was filed soon after the verification statement was recorded. Needless to say that as far as the complaint is concerned, there was no averment against the proposed accused. It was stated that the accused Nos.2 to 4, in collusion with accused No.1, had forged and fabricated the documents, submitted a fake list of tenants and other documents of tenants such as electricity bills, rent receipts, etc. There is no averment in the complaint that it was Advocate Golwala who had forged the documents. In fact, he was a witness in Civil Suit No.167 of 2010. He had

filed his affidavit of evidence in the said suit. According to the complainant-petitioner, the Advocate had not marked his presence for the purpose of cross-examination and after going through the affidavit filed by the Advocate, the complainant had filed an application before the Civil Court seeking action under Section 190 of Cr.P.C. That no specific orders are as yet filed in the said application.

5. In the present case, the petitioner has stated that according to him, Advocate Golwala had acted in collusion with the original accused Nos. 1 to 4 in the civil proceedings. It is submitted by the petitioner that in fact, an order under Section 319 of Cr.P.C. can be passed at any stage. It is also argued that there would be no prejudice caused to Advocate Golwala since the process is not issued. In fact, the verification statement and the examination-in-chief was not in consonance with the pleadings in the complaint as far as Advocate Golwala was concerned. In the Petition, the petitioner had filed an affidavit submitting that he would proceed against respondent Nos. 1 to 4 in the Revision Application and, therefore, there was no reply filed by the original accused Nos. 1 to 4.

6. The learned Revisional Court has considered the application and rightly held that the provisions of Section 319 of Cr.P.c. the powers can be exercised only after recording the evidence during the trial. In the present

case, the learned Magistrate had not even arrived at conclusion as to whether it would be a fit case for issuance of process and hence it rightly rejected the application. The Revisional Court has also taken into consideration the fact that since the rejection of the application seeking arraignment of accused proposing to add Advocate Golwala as accused was an interlocutory order. Therefore the Revision Application was not maintainable. It was also rightly considered that there was no provisions in the Cr.P.C. to allow the amendment to the complaint.

7. The petitioner appearing in person submits that the language of Section 319 of Cr.P.C. contemplates that an order under Section 319 can be passed in the course of any inquiry also and, therefore, according to him, the trial Court has committed a grave error in refusing to allow the application under Section 319 of Cr.P.C. as trial had not commenced.

8. The Black's Law Dictionary defines 'inquiry' as "fact-finding/a request for information, either procedural or substantive.". It is clear from the language that the learned trial Court had not formed an opinion as to whether it would be a fit case for issuance of process. Section 319 of Cr.P.C. contemplates as follows :-

“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 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.”

Sub-section (2) of Section 319 is to be read as a corollary to sub-section (1) which mandates that the proposed accused may be arrested if he is present or summoned as the circumstances of the case may require. It would, therefore, cause prejudice to the accused as there were no averments in the

complaint against the proposed accused and by virtue of the civil proceedings, he was being impleaded as an accused.

7. The Hon'ble Apex Court in the case of **Hardeep Singh v/s. State of Punjab and Ors. (2014) 3 SCC 92** has held as follows :-

“Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319 (4) Cr.P.C., the proceeding against such person is to commence from the stage of taking cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested for cross-examination.”

It is further held that :

“the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused.”

In the present case, the learned Magistrate had not even arrived at a conclusion as to whether it would be appropriate to issue process against the accused mentioned in the complaint as the Court was in the process of

recording evidence before charge.

8. The reasons assigned by both the Courts for rejecting the application are justifiable and do not warrant any interference. The Petition stands dismissed. Rule is discharged. All contentions are kept open and may be urged and considered at appropriate stage in accordance with law in the eventuality that cognizance is taken.

(SMT. SADHANA S.JADHAV, J.)