

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 509 OF 2019

Mrs. Sarika Jyotiba Gurav	]	
Age: Adult, Indian Inhabitant	]	
Residing at A1 building, Room	]	
No. 8, B.M.C. Staff Quarters	]	
(ERC), Dr. E. Moses Road, Worli	]	
Mumbai- 400018.	]	APPLICANT

VERSUS

1.	The State of Maharashtra	]	
	Through Worli Police Station	]	
	Mumbai.	]	
		]	
2.	Mr. Ashok P. Patil	]	
	Residing at A2 building Room	]	
	No. 6, BMC Staff quarters Dr. E.	]	
	Moses Road, Worli	]	
	Mumbai- 400018.	]	RESPONDENT

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Mr. Datta Mane i/b. Mr. Parth P. Shah, Advocate for the Applicant.

Mrs. Sandhya Nanavare, Advocate for Respondent No. 2.

Mrs. Rutuja Ambekar, APP for Respondent-State.

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CORAM : S. S. SHINDE J.

DATE : 27th August 2019.

JUDGMENT

1. Rule. Rule made returnable and heard with the consent of the learned counsel appearing for the parties.

2. Brief facts leading for filing the present application are as under:-

It is the case of the Applicant that, the Applicant is the wife of Mr. Jyotiba Gurav, who is working in Bombay Municipal Corporation (for short "BMC") employee, residing at BMC Quarters, A1 building, Dr. E. Moses Road, Worli, Mumbai 400018, along with the Applicant and family. Respondent No. 2 is also a BMC employee and stays in the opposite building of the Applicant. In the months of May 2015, a family of Respondent No. 2 went to their native place. The victim during said period was perusing MS-CIT course, and hence she came back to Mumbai on 17/5/2015. On 20/05/2015 in the morning the Applicant called Respondent No. 2, and informed that, she saw the Accused No. 1 as well as victim at the residence of Respondent No. 2, and asked him to come back to Mumbai. At that time, Tulsa Jadhav got a call from her sister Dwarka, informing that, there is some problem in the house of the Applicant. Tulsa Jadhav left from her office at around 5.30 p.m. and went to the house of the Applicant. There she found that, the victim was sitting in one corner and the Applicant, Shubhangi Salvi, two relatives of the Applicant were present. The Applicant was shouting at the victim. Further the Applicant showed the messages from the victim's phone to Tulsa Jadhav and thereafter, Tulsa Jadhav yelled at victim in front of everyone present there. Thereafter, Tulsa Jadhav took the victim at her residence.

Respondent No. 2 came back in the morning on 21/05/2015. Respondent No. 2 came back and called Tulsa Jadhav to bring the victim back home as she was with Tulsa Jadhav at her residence. At around 2.30 p.m. Respondent No. 2 took the victim to house of Applicant, and at that time Applicant informed Respondent No. 2 that, Accused No. 1 has taken overdose of sleeping pills and he was restless and murmuring something in the sleep. The victim went in the kitchen, and brought a water bottle of cold water, and sprinkled water on person of the accused Mr. Gurav and tried to wake him up. The victim and Respondent No. 2 were at the residence of the Applicant for nearly 30-40 minutes. Respondent No. 2 then came to his residence along with the victim and ordered food from outside. After having lunch, the victim was cleaning the utensils and she vomited twice. Upon asking the victim, what has happened?, she said she has consumed something. Respondent No. 2 immediately took the victim to Nair Hospital and during the treatment, at around 5.10 p.m. the doctor declared her dead. Thereafter, FIR came to be lodged on 11/06/2015 being C.R. No. 261/15 under Section 306 of the Indian Penal Code against co-accused Mr. Gurav. After the investigation charge sheet came to be filed.

3. It is further the case of the Applicant that, even after the charge sheet was filed, supplementary statement of Respondent No. 2 and the witness Tulsa

Jadhav were recorded. Those statements were never brought on record by the State as per provisions of Section 173 of the Code of Criminal Procedure (for short "Cr.P.C."). Learned Additional Sessions Judge without considering provisions of Section 173 and 225 of the Cr.P.C., accepted those additional statements tendered by Respondent No. 2, and has passed the impugned order. Thereafter, Respondent No. 1 had filed the application for adding Sections 376 and 313 of Indian Penal Code (for short "IPC") against the Accused. Said application was rejected by learned Additional Sessions Judge. Respondent No. 2 challenged the said rejection order before the High Court, and the High Court set aside the said order and directed Investigating Officer to add section 376 of IPC against the Accused. Respondent No. 2, neither while in making application to add Section 376 of IPC nor while filing petition in the High Court, pleaded that the applicant be added as an accused. However, surprisingly when Respondent No. 2 succeeded in petition filed in the High Court, said application came to be filed just to harass the Applicant. Thereafter, Respondent No. 2, without adhering to the mandate of Section 225 of the Cr.P.C., filed the application for adding the Applicant as co-accused, which was allowed by the learned Additional Sessions Judge vide order dated 25th March 2019. Hence, the present criminal application.

4. It is the contention of the learned counsel for the Applicant that, the Applicant is made accused by invoking Section 319 of Cr.P.C. It is submitted that, yet the trial is not commenced, and therefore, the order passed by the Sessions Court is not legally sustainable. In support of aforesaid contention, learned counsel appearing for the Applicant placed reliance on the exposition of the Hon'ble Supreme Court in the case of Dev Wati & Ors Versus The State of Haryana and Anr¹ and in particular paragraph 7 of the said judgment. The sum and substance of the arguments of the learned counsel appearing for the Applicant is that, unless the recording of evidence is commenced before the Trial Court, the prayer for invoking Section 319 of Cr.P.C. for adding the accused cannot be entertained, at the instance of the 1st informant.

5. On the other hand, learned counsel appearing for Respondent No. 2 relying upon the affidavit in reply of Respondent No. 2 submitted that, application filed by the Applicant is devoid of merits. It is submitted that, Applicant is the wife of the Accused No. 1. Applicant abetted and played very important role in instigating the victim to commit suicide. Since the investigation was not conducted properly, criminal application was filed before the High Court by the Respondent seeking direction to the Investigating Officer. The High Court

¹ Criminal Appeal No. 134 of 2019.

(Coram: A.S. Gadkari, J.) decided the Criminal Application No. 30 of 2018 on 14th September 2018, whereby direction was given to cause proper investigation, and the offence punishable under Section 376 of IPC was added. Further this Court has also directed the office of DGP to conduct enquiry against the Police officer Mr. Mali, and said enquiry ultimately resulted into placing said Investigating Officer under suspension. It is submitted that, there was delay in recording the FIR and the concerned Police did not take any steps to arrest the Accused No. 1, and waited till he gets the Anticipatory Bail, all these things have already caused miscarriage of justice. The Police are not at all interested in fairly registering the offence and conducting actual investigation. The matter is at very preliminary stage and thus it calls for rectification of errors in the investigation, else same may cause injustice. It was very much apparent from the statements made by Respondent No. 2 and niece Ms. Tulsa Jadhav in November, 2015, before the Additional Commissioner, after the complaint of Respondent No. 2 against the concerned Police Officers, that there is active role of the Applicant in alleged commission of suicide. It was the Applicant who defamed the Victim in the vicinity, compelling her to kill herself by committing suicide. It is the contention of Respondent No. 2 that, though the charge is not yet framed, there was no legal impediment for filing the application before the learned Sessions Judge or adding the Applicant as accused. Learned Sessions Judge also rightly opined that, the

Applicant has very good opportunity to defend her case in the trial. It is further submitted that, in the case of abatement the statements of the parents, relatives and friends plays vital role, and accordingly the learned Sessions Judge has rightly added the Applicant as the Co-Accused. In the Month of November 2015, the statements were recorded by the Additional Commissioner is the admitted position. Said statements are placed on record before the learned Sessions Judge by Respondent No. 2 with the covering letter from the office of the Additional Commissioner with their necessary seals and stamps.

6. Learned counsel appearing for Respondent No. 2 relying upon the judgment of Hon'ble Supreme Court in the case of **Hardeep Singh Versus State of Punjab & Ors, decided in Criminal Appeal No. 1750 of 2008**, submits that, the Trial Court can invoke provisions of Section 319 of Cr.P.C. even prior to recording of the evidence, and even at the stage of inquiry, if the case is made out by the prosecution, in as much as, if the relevant material is surfaced on record which would indicate the role of proposed accused in the commission of crime. It is not necessary that, such power shall be exercised by the Trial Court under Section 319 Cr.P.C. only after trial is commenced. Learned counsel invites attention of this Court to the judgment in the case of **Hardeep Singh** (supra) and in particular observations made in paragraph 45 of the said judgment.

7. Heard learned counsel appearing for the parties at length. With their able assistance perused the averments in the application and annexures thereto. Two main contentions are raised by the Applicant. Firstly the Trial Court should not have invoked Section 319 of Cr.P.C., since the trial is not yet commenced. It is the submission of the learned counsel for the Applicant that, it is only after the trial is commenced the Trial Court can invoke Section 319 of Cr.P.C. The said contention needs to be considered in the light of judgment of Constitution Bench of Hon'ble Supreme Court in the case of **Hardeep Singh** (supra) and in particular paragraph 50 thereof, which reads as under-

50. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor the legislature could have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have

been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 Cr.P.C.

8. It is clear from the observations made by the Hon'ble Supreme Court herein above that, even the Trial Court can invoke Section 319 Cr.P.C., at the stage of inquiry, however, under exceptional circumstances. Therefore, the contention of the learned counsel for the Applicant that, Section 319 Cr.P.C., can be invoked only after the trial is commenced is not the correct proposition in law.

9. Secondly, the contention of the Applicant is that, there are no exceptional circumstances to invoke Section 319 Cr.P.C. by the Trial Court before the trial is commenced. In this respect, it needs to be mentioned that, the police was not ready to register the FIR and the informant approached this Court by way of filing Criminal Application No. 30 of 2018. This Court not only directed to register the FIR, but also directed to cause the inquiry of concerned police officer. The statement of the witnesses and in particular statement of Tulsa Jadhav is at the earliest wherein she has stated about involvement of the Applicant in the alleged offence. In that view of the matter, the Trial Court has

rightly invoked Section 319 Cr.P.C. and added the present Applicant as accused. There is no reason to interfere in the impugned order. Hence, application stands rejected.

10. The observations made herein above are *prima facie* in nature and confined to the adjudication of the present Criminal Application.

[S.S. SHINDE, J.]