

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 646 OF 2018

Gulabrao Natu Yevale

...Applicant.

Vs.

Popat Sakaram Yewale & Ors.

....Respondents.

Mr. P.A. Pol i/by Pol Legal Juris for the Applicant.

Mr. Shailesh Chavan a/w Mr. Shivraj Dhanwade for the Respondent Nos. 1 to 7.

Mrs. J.S. Lohokare APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.
DATE : 4th SEPTEMBER, 2019.

P.C.:-

The Applicant, the Original Complainant in CR No. 7 of 2009, has questioned the correctness, legality and propriety of the Order dated 16th October, 2018 passed below Exhibit 51 in Sessions Case No. 158 of 2011, rejecting the Application filed by the Prosecution under Section 216 of the Code of Criminal Procedure for alteration of charge and/or addition of charge.

2 The Respondents were initially charged with Sections 395, 342, 435, 452 and 427 of the Indian Penal Code and accordingly, the charge-sheet was initially submitted by the police.

3 During the course of further investigation by the Investigating Agency, it was revealed that, an offence as contemplated under Section 397 of the I.P.C. has also been committed by the Respondents and therefore, the Investigating Officer submitted his

report to the Trial Court through the learned APP in that behalf.

The prosecution thereafter filed an Application below Exhibit 51 for alteration of charge thereby adding Section 326 and 324 read with Section 149 of the I.P.C.. By the impugned Order dated 16th October, 2018, the Trial Court has rejected the said Application.

As noted earlier, in view of the further investigation carried out by the Investigating Agency, now an offence under Section 397 has been disclosed and the said section has been applied by the prosecuting Agency.

4 The Medical Certificate of injured *prima facie* indicates that, an offence under Section 326 of the I.P.C. is not made out. However, in view of the application of Section 397 of the I.P.C., it appears to this Court that, the grievance of the Applicant has been sufficiently redressed.

5 The Applicant is at liberty to lead evidence in support of his contention for application of Section 326 of the I.P.C. at the time of recording of his evidence and if the Trial Court comes to the conclusion that, an offence under Section 326 of the I.P.C. is made out, the Trial Court may take appropriate steps in that behalf, if necessary and permissible under the law.

6 In view of the above, I find no merits in the Application, Application is accordingly rejected.

(A.S. GADKARI, J.)