

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

CRIMINAL REVISION APPLICATION NO.386 OF 2019

Shri.Subhash Yashwant Suryawanshi	..Applicant
V/s.	
The State of Maharashtra & Ors.	..Respondents

Mr.Umesh R. Mankapure for the Applicant.

Mr.Nitesh J. Mohite i/by Mr.Satyavrat Joshi for Respondent No.3.

Mr.A.A. Palkar, APP for Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 13th MARCH 2020

P.C.

1. The challenge in this petition is to the order dated 11th March 2019 (below Exhibit-25) passed by the learned Additional Sessions Judge, Islampur in Sessions Case No.73/2016. By the impugned order application (Exhibit-25) filed by the petitioner under Section 319 of the Code of Criminal Procedure for addition of Mr.Narendra Raghunath Suryawanshi as an accused, has been rejected.

2. The brief facts necessary for the disposal of the Revision Application, may be stated thus :-

The incident in question is alleged to have happened on 14th September 2016. According to the applicant/complainant, who at the relevant time was the President of the Municipal Council, Islampur, he was proceeding as a pillion rider on a motorcycle driven by one Mr.Siddhnath Sawant. When they had reached in front of Dr.B.M. Patil Hospital at about 6.30 p.m, a motorcycle coming from behind gave a dash to the motorcycle, on which the complainant was a pillion rider. According to the applicant when he turned, he saw that the motorcycle rider who has coming from behind, who had given dash was one Jitendra Suryawanshi, (Accused) who had fallen down. It is claimed that when the petitioner went to help Jitendra Suryawanshi, he took out a Koyta and assaulted the applicant near his right ear and on cheek. On the basis of the a complaint dated 14th September 2016, an FIR came to be registered and after investigation a charge-sheet came to be filed against Jitendra Suryawanshi who is facing prosecution in the aforesaid Sessions Case, for the offence punishable under Section 307,324 and 504 of the Indian Penal Code. In the said case the applicant has examined himself as a prosecution witness and it is at this stage that the applicant has filed application at Exhibit-25 under Section 319 of Cr.PC. for impleading Mr.Narendra Suryawanshi as a co-accused. For this purpose, the applicant has placed reliance on

his supplementary statement dated 18th September 2016, as also his own evidence before the learned Sessions Judge. In short it is contended that when the initial complaint was lodged on 14th September 2016 the applicant on account of a substantial blood loss, could not narrate the full incident properly. It is contended that at the time of the incident, Narendra Suryawanshi also came from behind on a motorcycle. It is claimed that the accused Jitendra Suryawanshi told Narendra Suryawanshi that the applicant would not be done to death by a Koyta and asked Narendra Suryawanshi to bring a pistol. Thereafter, Jitendra Suryawanshi and Narendra Suryawanshi fled from the spot on the motorcycle of Narendra Suryawanshi. It was also contended that on 15th September 2016 when the petitioner was under treatment, a missed call was received from the mobile phone of Narendra Suryawanshi. Hence, the nephew of the applicant by name Ravindra Suryawanshi, called Narendra Suryawanshi from another mobile phone when Narendra Suryawanshi is alleged to have held out a threat to the life of the applicant. On this ground applicant sought to implead Narendra Suryawanshi as co-accused.

3. I have heard the learned counsel for the applicant and the learned Assistant Public Prosecutor for the respondent No.1 and

Mr.Mohite learned counsel for respondent No.3. None appears for the respondent No.2.

4. At the outset there is a serious doubt as to whether such an application for impleadment can be made and entertained at the instance of the original complainant/victim. It is now well settled that it is the Public Prosecutor/Additional Public Prosecutor, who is in charge of the prosecution and it would not be open to the complainant/victim to independently file such an application. However, I do not propose to express to record any finding or binding opinion on this issue, as even otherwise on facts I do not find that any case for interference is made out.

5. The learned counsel for the applicant strenuously urged that there are sufficient grounds for impleadment of Narendra Suryawanshi as a co-accused. For this purpose the learned counsel has relied upon the supplementary statement of the applicant as well as the statements of other witnesses and the evidence of the applicant recorded in the sessions case. It is submitted that the learned Sessions Judge has not properly appreciated these circumstances.

6. The learned Assistant Public Prosecutor has submitted that at this stage there is no case made out for impleadment. The learned Assistant Public Prosecutor points out that the learned Sessions Judge has left the issue open, if at all there is a necessity to add Narendra Suryawanshi after recording of the evidence of the prosecution witnesses.

7. I have considered the submissions made. *Prima facie* it appears that Narendra Suryawanshi is a political rival of the applicant. The learned Sessions judge has considered the investigation papers thread bare, as also the evidence led and at has found that the initial complaint and the FIR did not name Narendra Suryawanshi and he was named for the first time on 18th September 2016. The learned Sessions Judge has found that during the investigation, Call Data Record ('CDR' for short) of the mobile of Narendra Suryawanshi, was obtained and it was found that at the relevant time Narendra Suryawanshi was present in Sangli and was not present on the spot of the incident. The learned Sessions Judge has noticed that there was no evidence found to connect Narendra Suryawanshi with the alleged incident. The learned Sessions Judge has noticed the decision of the Supreme Court in the case of

*Brijendra Singh V/s. State of Rajasthan*¹, in order to find that the power under Section 319 Cr.P.C. can be exercised only where strong and cogent evidence is there against a person and such a power cannot be exercised in a casual or a cavalier manner. That apart, although the learned Sessions Judge has held at this stage that there is no necessity to add Narendra Suryawanshi as a co-accused, the issue is kept open if after recording of the prosecution evidence it is found that Narendra Suryawanshi is involved in the crime he can be arrayed as a co-accused under Section 319 of the Cr.P.C. No exception can be taken to the finding recorded by the learned Sessions Judge. The impugned order does not suffer from any infirmity, so as to require interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C.V. BHADANG, J.

1 (2017) 7 SCC 706