

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO.4277 OF 2019**

**KASHINATH RAMBHAU BORHADE )...PETITIONER**

**V/s.**

**M/S.BHANDARI ASSOCIATES AND ORS. )...RESPONDENTS**

Dr.Uday Warunjikar, Advocate for the Petitioner.

Mr.Suresh Sabrad, Advocate for Respondent No.4.

Mr.S.V.Gavand, APP for the Respondent – State.

**CORAM : A. M. BADAR, J.**

**DATE : 18<sup>th</sup> FEBRUARY 2020**

**P.C. :**

1            Heard the learned counsel appearing for the petitioner /original complainant at sufficient length of time. He drew my attention to the application at Exhibit 315 filed in R.C.C. No.177 of 1998 and contended that after death of original accused nos.2 and 3, the complainant could lay his hands on the Partnership Deed. He could find out the fact that on 1<sup>st</sup> April 1995 Leelabai

Rakiblal Bhandari joined the original accused no.1 partnership firm and subsequently, on 23<sup>rd</sup> September 2004 Sachin Rikhab Bhandari joined the said partnership firm. Therefore, in submission of the learned counsel for the petitioner, the learned trial court ought to have allowed the application by directing the complainant to amend the complaint so as to join Leelabai Bhandari and Sachin Bhandari as party respondents to the criminal complaint.

2           I have considered the submissions so advanced. The complaint was filed in the year 1998 against partnership firm named M/s.Bhandari Associates as well as its two partners namely Shri. Rikhabdas Bhandari and Shri.V.B.Lunavat. With passage of time, both these partners passed away. Therefore, subsequently, the petitioner herein/original complainant had applied for joining Leelabai Bhandari and Sachin Bhandari as the co-accused in the complaint.

3           I have perused the entire pleadings in the complaint. There is no pleading qua the proposed accused Leelabai Bhandari

and Sachin Bhandari in the complaint. Constructive liability of penal consequences cannot be imposed on the accused persons who were sought to be added without there being any averment in the complaint against them.

4            In this view of the matter, no fault can be found in the impugned order passed by the learned trial Magistrate.

5            The petition is, therefore, dismissed.

**(A. M. BADAR, J.)**

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