

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 481 OF 2021**

David Anthony Kaunder

.....Applicant

V/s.

The State of Maharashtra

and anr.

.....Respondents

* * * *

Ms. Ankita Bamboli i/by. Ms. Neha Patil, Advocate for the applicant.

Mr. A.D. Khamkhedkar, APP for State.

Coram : Sandeep K. Shinde, J.

Friday, 24th September, 2021.

P.C. :

1. This application under Section 482 of the Criminal Procedure Code challenges the order dated 3rd April, 2021 by which applicant's application under Section 319 of the Criminal Procedure Code has been rejected by the Additional Sessions Judge, Dindoshi, Borivali Division, Mumbai.

. Brief facts of the case are that;

2. Applicant is accused in Sessions Case No.186/2012, against whom the charge under Section 302 of the Indian Penal Code has been framed. Prosecution in support of the charge has examined the father of the deceased. While under cross-examination, he alleged, two Doctors attached to KEM Hospital, who had treated his injured son, were guilty of medical negligence and would depose that, for want of appropriate medical care, his son succumbed to injuries. Applicant-accused taking cue therefrom, requested the trial Court to proceed against, Dr. S.A. Rao and Dr. Pramod Kambli, in exercise of powers under Section 319 of the Criminal Procedure Code.

3. Power under Section 319 of the Criminal Procedure Code, can be exercised by the Court, suo-moto, on application by someone including the accused already before it, provided that, it is satisfied, that any person other than the accused had committed the offence, then he is to be tried together with the accused.

4. In consideration of the facts of the case, in my view, the application moved by the applicant-accused was not only devoid of merits but it was abuse of process of law. The application is therefore dismissed with costs of Rs.5,000/-

which the applicant shall deposit with the Tata Memorial Hospital within a month from today. Application is dismissed.

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(Sandeep K. Shinde, J.)