

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

CRIMINAL APPLICATION NO. 2654 OF 2021

Kapil @ Kapileshwar s/o Bhimrao Pawar ... Applicant

Versus

The State of Maharashtra and another ... Respondents

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Mr. S. T. Shelke, Advocate for applicant

Mrs. D. S. Jape, APP for respondent No.1-State

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CORAM : R. G. AVACHAT, J.

RESERVED ON : 15th MARCH, 2022

PRONOUNCED ON : 31st MARCH, 2022

ORDER :-

. The challenge in this application is to the order dated 20.10.2018 passed below application Exh.21 in Summary Criminal Case no.307 of 2017. Vide order impugned herein the learned Judicial Magistrate First Class, Sangamner, has allowed the application Exh.21 and directed to proceed against the applicant herein under Section 319(1) of the Code of Criminal Procedure.

2. Heard. It is a case instituted on police report. The informant was serving as an Assistant to Wireman with the office of Maharashtra State Electricity Distribution Company Limited (MSEDCL) at Ashvi. It so happened that there was some technical snag/breakdown in overhead electricity supply wires at village Khamba. He was, therefore, directed to accompany the Electrical Assistant Kunal Patait, accused in the case. Both of them reached the place by 11.00 in the morning. The technical snag was on the overhead wire on the electric pole standing at Shinde Vasti. Accused Kunal Patait asked the informant to climb the pole. He also informed that the electricity supply has been discontinued. His officer has obtained permission in that regard. The informant thereupon climbed the electric pole and started working to remove the fault. Electricity supplies resumed all of sudden. The informant suffered shock and fell down. He suffered multiple injuries. On his such report having been lodged, a charge-sheet was filed against the Electrical Assistant Kunal Patait (accused in the case).

3. The informant gave his evidence on oath. He testified. The Deputy Engineer Shri. Amit Ashok Dhoram had deputed accused

and the informant for removing the breakdown. It is further in his evidence that the applicant herein was a Labour Contractor. The informant was serving at MSEDCL as one of the labours supplied by the applicant herein. It is in the evidence of the informant that the applicant did not provide him safety equipments and as such, he too (the applicant) is liable to be prosecuted.

4. The learned Judicial Magistrate First Class found substance in the evidence of the informant and therefore allowed the application moved by the prosecution for impleading the appellant as one of the accused in the case.

5. The learned APP would submit that no fault could be found with the order impugned herein. A copy of contract/agreement between the MSEDCL and the applicant was placed on record to submit that it was the responsibility of the applicant to provide the labourers with safety measures/equipments. Failure on his part to provide such equipments makes him liable for being prosecuted for the offence in question. The learned APP therefore urged for dismissal of the application.

6. The Constitution Bench of the Apex Court in the case of *Hardeep Singh Vs. State of Punjab & others – 2014 DGLS (SC) 35*, has observed that the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. It has further been observed that the difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial, therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

7. Admittedly, the informant was working as Assistant to Wireman (Electrical). The technical snag in the overhead electrical wires had occurred at village Khamba. Admittedly, the informant was assigned to work with Sub-Station at Ashvi. The village Khamba was not within the limits of Ashvi sub-station. Be that as it may.

8. It was the accused Kunal Patait (Electrical Assistant) who took the informant with him for removal of the snag. It is alleged

that both of them went there on the instructions of higher authorities. The informant climbed the electric pole on the say of the accused Kunal. While the informant was working to remove the fault, the electric supply resumed all of sudden. The informant suffered shock and fell down. The cause of the accident/offence is all of a sudden resumption of electricity supply. For the offences punishable under Section 338 of Indian Penal Code, principle of cause of causes is material one. Dereliction in duty must be a direct cause of the happening. Admittedly, the applicant herein was nowhere in the picture. He had neither instructed the informant to accompany the accused Kunal and do the needful. True, the applicant was supposed to provide a contract labours, supplied by him, with safety measures. When the informant was not armed with any safety measures, he ought not to have climbed the pole. It is not that the applicant herein had insisted him to climb the pole and do the needful. It was only at the instance of the Electrical Assistant Kunal (accused) the informant took the risk. The Deputy Engineer against whom the action under Section 319 Cr.PC is taken, was found to be responsible for all of sudden resumption of electricity supply the informant's evidence in examination in chief noway takes

the applicant herein close to the alleged offence. In these circumstances, the trial Court ought not to have allowed the application Exh.21. Interference therewith is therefore called for.

9. The criminal application is therefore allowed in terms of prayer clause (B).

[R. G. AVACHAT, J.]

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