

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

**CRIMINAL WRIT PETITION NO.1503 OF 2019**

Bhausahab s/o. Shivram Dilwale  
and ors.

..Petitioners

Vs.

The State of Maharashtra and ors.

..Respondents

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Mr. N.R.Thorat, Advocate for petitioners  
Mrs.S.P.Sonpavale, APP for respondent no.1.  
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**CORAM : R.G. AVACHAT, J.  
DATE : MARCH 17, 2022**

**PER COURT :-**

Heard.

2. The challenge herein is to the order passed by the Court of Judicial Magistrate, First Class, Paithan, Dist.Aurangabad, on application Exh.15 in R.C.C. No.103 of 2015. Vide the order impugned, process has been issued against the petitioners herein.

3. According to learned counsel for the petitioners, the impugned order has been passed in exercise of the powers under Section 319 of the Code of Criminal Procedure. No evidence was ever

recorded before the trial Court and therefore, the order impugned herein is unsustainable under Section 319 of Cr.P.C.

4. It is true that for invoking jurisdiction under Section 319 of Cr.P.C., the stage of recording of evidence must have been commenced. There has to be some evidence against a person who is not an accused in the case. The Court has, however, to go by the substance of the matter. Admittedly, there is material against both the petitioners herein to proceed against them. The Court taking cognizance of the offence is, therefore, justified in issuing summons to the petitioners herein inspite of they having been not named as accused in the charge-sheet. A useful reference can be had in this regard to the judgment of the Apex Court in the case of **Chittaranjan Mirdha Vs. Dulal Ghosh and anr., 2009 Cri. L.J.3430.**

5. The petition, as such, sans merit. The same is, therefore, dismissed.

[R.G. AVACHAT, J.]

kbp