

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

WRIT PETITION NO.577 OF 2020

Pradeep Narottamdas Harsora

And Another

... Petitioners

Versus

The State of Maharashtra

And Another

... Respondents

Mr. Ganesh Bhujbal for the Petitioners.

Mr. K.V. Saste, APP for Respondent No.1-State.

CORAM : S. M. MODAK, J.

DATE : 13 APRIL 2022

JUDGMENT :

. Considering a short issue involved in this Writ Petition, it is heard at an admission stage itself. Rule. Mr. Saste, learned APP waives notice for Respondent No.1-State.

2 The present two Petitioners are the original Accused Nos.1 and 2 in Criminal Case, bearing Nos.C.C. No.108/PW of 2005 pending before the the Court of Metropolitan Magistrate, 40th Court, Girgaum, Mumbai. This is a prosecution for an offence punishable under Sections 467, 471, 402 read with 34 of the Code of Criminal Procedure, 1973 ("Code"). D.B. Marg Police Station, Mumbai filed a charge-sheet against these two Petitioners and even recording of evidence has started. One Kusum Narottamdas Harsora gave evidence as PW.1. She was cross examined by both these Petitioners. The evidence is lengthy and its copy is filed on Pg.15 to Pg.36.

3 When P.W.1 was under cross examination by these Petitioners, the Prosecution preferred an application under Section 319 of Code below Exhibit '87'. The prayer was for impleading one Ms Anita Harsora, i.e. the present Respondent No.2 as an accused. It was allowed by the learned Magistrate as per Order dated 30 March 2012 and therefore charge was also framed against the Accused No.3. This Court set aside the said Order and directed the Trial Court to decide the impleadment application after cross examination of P.W.1.

3 After it was over, learned Magistrate has joined Respondent No.2 as Accused No.3 as per Order dated 15 February 2014. The said Order was challenged before this Court by way of Criminal Writ Petition No.514 of 2016. This Court was pleased to dismiss the said Writ Petition on the ground that Respondent No.2 was permitted to cross examine P.W. 1. Its copy is filed at Pg.68.

4 There are also other Writ Petitions, and its copies are also filed. This Court in Criminal Writ Petition No.1526 of 2018, as per Order dated 11 January 2019 was pleased not to interfere in the trial. Even this Court imposed a cost of Rs.15,000/- to be paid to the complainant.

5 The present Petitioner by way of an Application at Exhibit 540 and Respondent No.2 by way of an Application at Exhibit 541, have sought clarification from the learned Magistrate. It is in respect of the evidence, which may be put to them in the Statement under Section 313 of the Code. Learned Magistrate was pleased to pass the following Order dated 3 January 2020 :-

“Heard. Section 313, Cr.P.C. is very clear. Incriminating circumstances are to be put up. Accused to note. Filed.”

6 The Petitioners have challenged the said Order by way of present Writ Petition. I have heard Mr. Ganesh Bhujbal for the Petitioners and Mr. K.V. Saste, APP for Respondent No.1-State.

7 It is true that there is an amendment in the provisions of Section 313 of the Code by inserting sub-section 5. It permits the Court to take assistance of the Prosecutor and Defence while preparing the relevant questions. Considering this provisions, the directions can be issued to the Trial Court. If such directions are issued, interest of Respondent No.2, who is Accused No.3 will also be protected. Hence, even though she is not before the Court, this Writ Petition is decided.

8 The provisions of Section 313(5) of the Code are reproduced below :-

Section 313(5) :

“The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this Section.”

9 The Trial Court can do following things :

- (i) take help of the Prosecutor and
- (ii) take help of Defence Counsel.

10 Such help can be taken while preparing the relevant questions,

which will be put to the accused. Earlier there was no express provision for filing written statement. Now it has been specifically incorporated.

11 It is true that the evidence of P.W. 1 was complete prior to impleading accused No.3. Even her fresh evidence was recorded after impleadment of accused No.3. On subsequent occasion, she was cross examined only by accused no.3. In view of this, it but natural for all three accused persons to have apprehension in their mind about the questions likely to be put to them. The Accused Nos.1 and 3/present Petitioners may think that on the basis of evidence of P.W.1, recorded earlier questions will be put to them (and not on the basis of evidence recorded afterwards). At the same time, Respondent No.2 may feel that she will be put questions only on the basis of evidence recorded subsequently (and not on the basis of evidence recorded prior to her impleadment).

12 Considering this apprehension, this Court feels that their interest can be protected, if they will comply with the provisions of Section 313(5) of the Code. The present Petitioners as well as Respondent No.2 may be at liberty to give assistance to the trial court and then trial court may record the statements under Section 313 of the Code. In view of that following Order is passed :-

: O R D E R :

- (i) The Writ Petition is partly allowed.
- (ii) The Court of Metropolitan Magistrate, 40th Court, Girgaum, Mumbai is directed to comply with the provisions of Section 313(5) of the Code of Criminal

Procedure.

- (iii) The present Petitioners as well as Respondent No.2 are at liberty to give assistance to the Court prior to recording their statements.
- (iv) Even they are at liberty to file written statement, if they so desire.
- (v) The trial court to deal with the request made in two applications below Exhibits 540 and 541 while doing exercise as mentioned above.

13 It is made clear that no adjournment will be granted to the parties. The trial Metropolitan Magistrate Court is at liberty to impose even exemplary costs, if unnecessary adjournments are sought by any of the party.

14 Rule is discharged.

RAJESH
VASANT
CHITTEWAN

Digitally signed by
RAJESH VASANT
CHITTEWAN
Date: 2022.04.20
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(S. M. MODAK, J.)