

VRJ

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

WRIT PETITION NO.1243 OF 2021

Suratsingh Bhavanisingh Rathod	... Petitioner
V/s.	
The State of Maharashtra	... Respondent

Mr. Karansingh B. Rajput a/w Mr. Shashikant Chaudhari with Snehal Chaudhari with Pranot Pawar for the petitioner.

Mr. A.R. Patil, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 6, 2022

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The petitioner is challenging orders dated 2nd February, 2021 and 8th February, 2021 passed by the learned Judicial Magistrate, First Class, 7th Court, Thane in relation to First Information Report No.902 of 2020 registered with applicant No.2 police station. On 25th November, 2020, FIR was registered against the petitioner for offence under section 304 of the Indian Penal Code, 1872. On 30th January, 2021 the investigating officer filed an application to delete section 304 and to add section 304(A) of the Indian Penal Code before the learned Trial Court. The learned Trial Court,

therefore, directed investigating officer to appear and explain the said.

3. On 30th January, 2021 itself the charge-sheet was filed before the learned Trial Court under section 304(A) of the Indian Penal Code and the investigating officer was directed to appear along with case diary on 1st February, 2021.

4. On 2nd February, 2021, the petitioner filed bail application which was rejected by the learned Trial Court holding that the Court has not taken cognizance to include section 304(A) of the Indian Penal Code.

5. On 2nd February, 2021, the learned Trial Court refused to accept the charge-sheet in its form and directed investigating officer to delete section 304 of the Indian Penal Code.

6. On 8th February, 2021, the learned Trial Court to cognizance of offence under section 304 of the Indian Penal Code. Both the orders dated 2nd February, 2021 and 8th February, 2021 are the subject matter of present petition.

7. The power of the learned Magistrate to include or exclude any section into charge sheet after the investigation has been completed and charge sheet has been submitted by the police was the issue which come up for the consideration of the learned Apex court in the case of **State Of Gujarat Vs. Girish Radhakishan Varde** reported in (2014) 3 SCC 659.

8. The Apex Court in paragraph 14 in relation to the cases instituted on the basis of the first information report under section

154 of the Code of Criminal Procedure held that it is the investigating agency which alone is legally entitled to conduct the investigation and thereafter submit the charge sheet. It is held that in a police case after the submission of charge sheet, the learned Magistrate cannot include any section into charge sheet after investigation has been completed and charge-sheet has been submitted by the police. However, it was made clear that the complainant/informant or prosecution would not be recalled from seeking legal remedy, if the investigation authorities have failed in their duty by not including into charge sheet any sections of the Indian Penal Code on which offence can be held to have been made out in spite of facts disclosed in the first information report.

9. It is held that after submission of charge sheet, it will be open for the prosecution to contend before the Trial Court at the stage of framing of charges to establish that on the given set of facts the appropriate sections, which according to the prosecution should be framed, can be allowed to be framed. Simultaneously, the accused has the opportunity at this stage to submit whether the charge sheet under particular provision should be framed, or not.

10. In view of authoritative pronouncement of the Apex Court in the case of **Girish Radhakishan Varde** (supra), the impugned orders cannot be sustained. Hence, following order:

- a) Rule is made absolute in terms of prayer clause (a);
- b) However, it is clarified that at the stage of framing of charges it would be open either for the prosecution or the accused to make

a request for framing of appropriate charge, if material on record justifies the same;

c) Since the petitioner has been released on bail by this Court by order dated 10th March 2021, till the framing of charges, same order shall continue and if at the time of framing of charges the Court comes to the conclusion that the material is sufficient to frame charge under section 304, the petitioner shall furnish fresh PR Bond of Rs.50,000/- with one or two local sureties in the like amount.

d) No costs.

(AMIT BORKAR, J.)