

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

CRIMINAL WRIT PETITION NO. 2367 OF 2022

Ajeet Shankarlal Bhatia

..Petitioner

Versus

State of Maharashtra & Anr.

..Respondents

Mr. Ganesh Bhujbal i/b. Baburao D. Shinde for Petitioner.
Smt. J. S. Lohokare, APP for State/Respondent No.1.

CORAM : SARANG V. KOTWAL, J.

DATE : 13th SEPTEMBER 2022

PC :

1. This is a writ petition challenging the order dated 09/03/2022 passed below Exhibit 222 by learned Judicial Magistrate, First Class, 2nd Court, Ulhasnagar, District Thane, in R.C.C.No.270 of 2011. The prosecution had preferred said application vide Exhibit 222 in that case U/s.319 of the Cr.p.c. for adding the Respondent No.2 herein as one of the accused. The trial had resulted from the investigation into the offence registered vide C.R.No. I 267 of 2010 dated 27/11/2011 filed by the petitioner herein. The F.I.R. was lodged U/s.387, 341, 420, 468, 34 r/w. 120B of I.P.C. at Ulhasnagar police station. The investigation was carried out and after completion of the investigation the charge-

sheet was filed against the accused namely Prakash Rochlani, Vicky Makhija, Mannu Jogra, Arjun Ramrakhyani, Dilip Ramrakhyani, Arun Gurgule, Parmeshwar Budge and Mohandas Ramrakhyani. The Respondent No.2 was not an accused in that charge-sheet. Arun Gurgule was public servant who was working with the Ulhasnagar Municipal Corporation (U.M.C.) in the town planning department.

2. The present Respondent No.2 was an Architect who had submitted an application on behalf of the petitioner for constructing a building at Barrack No. 748, Room No.528, Ulhasnagar – 2. The permission for that construction was granted on 09/07/2010. Subsequently, it was revoked on 28/09/2010. The prosecution case mentioned in the charge-sheet was that the accused Mohandas was a Corporator in U.M.C. since past 20 years before the F.I.R. The accused Arjun and Dilip are his sons. They were in the business of taking contracts for construction. Accused Mohandas also used to earn money by getting construction permissions on behalf of other contractors. It is alleged that they indulged in illegal activities. He was protecting the illegal

construction. The petitioner had a property at the above mentioned Barrack No.748, Room No.528, Ulhasnagar 2. He got the permission for construction with the help of these accused Dilip, Arjun and Mohandas and accused Arun Gurgule. The prosecution story further mentions that, these accused Dilip, Arjun and Mohandas demanded extortion money of Rs.50 lakhs in connection with that construction. It is alleged that, since the petitioner did not pay the amount, the accused pressurized the Respondent No.2 and because of that the Respondent No.2 gave a letter on 28/09/2010. The construction permission was cancelled on 28/09/2010 and thus the petitioner had suffered losses. The cognizance of the offence was taken and trial commenced. The petitioner was examined as PW-1. Till 08/12/2021 nine witnesses were examined. After that, application vide Exhibit 222 was made on 25/02/2022 and then the impugned order was passed on that application.

3. Learned counsel for the Petitioner submitted that the Respondent No.2 was hand in gloves with the other accused Mohan, Arjun and Dilip and to help him the Respondent No.2 had

given that letter which ultimately resulted in cancellation of the permission. He submitted that the Respondent No.2 has played a definite part in the entire conspiracy and, therefore, he is a necessary accused.

4. Learned APP submitted that the State of Maharashtra has not challenged the impugned order separately. She relied on the application preferred by learned APP before the trial Court.

5. I have considered these submissions and I have perused the depositions. The letter in question is at page No.99 of this writ petition. It was received in the Corporation on 28/09/2010. The last paragraph of the letter is reproduced in the words of the Respondent No.2:

“When I visited the site before approved the same person that means Mr. Dilip Ramrakhiyani and Mr. Prakash K. Rochlani both of them not present so today as this is stay as the proposal is disputed I withdrawal my consultancy from the proposal.”

6. Ignoring the grammatical and other mistakes from that paragraph, the meaning was clear enough and the Respondent

No.2 wanted to withdraw his consultancy from the said proposal. This letter was sent on the letter head of Suyog Associates. This letter nowhere mentions that the sanctioned plan should be cancelled. The letter was restricted to his own withdrawal from the project. The charge-sheet story itself mentions that the Respondent No.2 was pressurized by other accused in sending this letter. There are no allegations in the charge-sheet that he had conspired with other accused. This letter also does not mention that his request was that the plan should be cancelled. Nothing new has surfaced from this letter or from the depositions of the witnesses. All these facts were very well within the knowledge of the investigating agency and yet the Informant was not made an accused. No new facts have come to light. This letter also does not show that he asked for cancellation of plan which is the main subject matter of the charge-sheet.

Sub Section 1 of Section 319 of Cr.p.c. reads thus:

319. Power to proceed against other persons appearing to be guilty of offence, - (1)

“Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that

any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.”

7. From the record of this case, it does not appear that, from the evidence some new facts came to light showing Respondent No.2's involvement in this case. Even in the deposition of the petitioner who was examined as PW-1 there are no statements against the Respondent No.2 that he should be made accused. In this view of the matter, I do not find that the impugned order suffers from any illegality, impropriety or incorrectness. Therefore, I am not inclined to interfere with the impugned order.

8. The Writ Petition is accordingly dismissed.

(SARANG V. KOTWAL, J.)