

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

CRIMINAL WRIT PETITION NO. 3414 OF 2022

Arunima Jha

Age:- 33 years,

Indian Inhabitant

Currently resident:- A-705

Skyline Villa Apartments,

Behind Hiranandani Hospital Powai,

Mumbai-400076

...Petitioner

Versus

1. The State Of Maharashtra
(Through Powai Police Station)

2. Neeraj Kishanchand Sharma

Age:- 34 Years,

Indian Inhabitant

Resident at 1301/A Maple Hiranandani Gardens

Powai, Mumbai-400076

...Respondents

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Ms. Arunima Jha, Advocate for the Petitioner.

Mr. Mubin Solkar a/w Mr. Pramod Pandey i/b Mr. Aamir Sopariwala,
Advocate for Respondent No.2.

Mr. M. G. Patil, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 22nd SEPTEMBER, 2022.

PER COURT:

1. The Petitioner is aggrieved by order dated 24th August, 2022 passed by Sessions Court below Exhibit-8 in Sessions Case No.316 of 2021.

2. The First Information Report was registered with Powai Police Station vide C.R. No.582 of 2019 on 4th October, 2019 for offences under Sections 353, 504 and 506 of the Indian Penal Code, 1860 against Respondent No.2. On completing investigation, charge-sheet was filed. The case is pending before the Court of Sessions case is numbered as Sessions case No.316 of 2021.

3. The respondent No.2 is accused in the said case. He preferred application for discharge before Sessions Court.

4. The Petitioner preferred application Exhibit-8 seeking permission to Assist Public Prosecutor and intervene in application for discharge. It was contended that, intervenor may be permitted to assist Public Prosecutor and oppose application for discharge by filing affidavit of intervention and intervene in application for discharge. It was prayed that, intervenor may be permitted to assist the Public Prosecutor and oppose the said application for discharge as per Section 301 and 302 of Cr.P.C. Alongwith said application detailed application/affidavit was filed with prayers that, application filed under Section 227 of Cr.P.C. seeking discharge of accused be dismissed. The respondent No.2 filed reply and opposed that application of Petitioner with preliminary objection to maintainability of intervention application.

5. The learned Additional Sessions Judge Boriviali Division,

Dindoshi, Mumbai vide order dated 24th August, 2022 rejected the said application. While rejecting the application, it was observed that, plain reading of Section 301 of Cr.P.C. would reveal that a private person can instruct pleader who shall assist the Public Prosecutor. However, the role of the pleader is limited to the extent of assisting the Public Prosecutor and he may submit the written argument only with the permission of Court. The private person means “informant or a victim”. In the case of *Jagitsing Vs. Ashish Mishra*. It is held that, the victim has right to be heard at every stage from the investigation to culmination of the trial. In the present case the intervenor is neither the informant nor the victim for offences for which charge-sheet is filed. As per Section 301 of Code of Criminal Procedure, the eye witness who is neither the informant nor the victim cannot seek intervention to assist the Public Prosecutor.

6. The Petitioner in person submitted that, the definition of victim under Section 2(w) of Cr.P.C. is very wide. The Respondent No.2 is the husband of Petitioner. She is the witness to the incident which is subject matter of the proceedings. On account of quarrel with petitioner, information was given to Police Control room and Police came to residence and respondent No.2 was taken to Police Station. The Petitioner was also present at the Police Station. Non-

cognizable complaint of the Petitioner was recorded under Section 504 and 506 of Indian Penal Code. The incident referred to in the First Information Report has occurred in her presence. The Petitioner is the affected party, the Respondent has been threatening the Petitioner by repeated calls. The Respondent has filed application for discharge. The Petitioner has filed several non-cognizable reports with Powai Police Station against respondent No.2. The Court has vast power to examine, summon, reexamination or recall a witness at any stage of the proceedings, especially when the same is necessary for proper adjudication of cases. Even if the name of witness is not mentioned in the First Information Report or charge-sheet, to examine witnesses, powers are stipulated under Section 311 of Code of Criminal Procedure to examine witnesses. The first part of Section 311 of Cr.P.C. provides that, the Court may at any stage of any inquiry, trial or other proceeding under the code, summon any person in attending, though not summoned as a witnesses or recall and reexamine any person already examined and the second part provided that, the Court shall summon and examine or recall and reexamine any such person if his evidence appears to it to be essential to the just decision of case. The Petitioner is witness in the case. The order dated 24th August, 2022 is in breach of articles 14 and 21 of the Constitution of India. It is necessary and vital

for the Court to consider true and correct facts and circumstance before concluding its decision on application for discharge. The Petitioner is aggrieved party. The petitioner be permitted to intervene in application for discharge and permitted to assist public prosecutor.

7. Mr. Solkar appearing for Respondent No.2 submitted that, the Petitioner has no locus to prefer the application under Section 301 and 302 of Code of Criminal Procedure. Section 311 of Cr.P.C. has no applicability in the present proceedings. The Petitioner is not the victim in the present case. The First Information Report is lodged by public servant, alleging obstruction in discharge of duty. Assuming that, the Petitioner is witness in the said proceeding, she is not empowered to prefer application under Section 301/302 of Cr.P.C. She has no right to intervene in application for discharge. The complaint of Petitioner is independent of the subject proceedings. The complaint of Petitioner has been recorded as Non-cognizable complaint which is distinct incident. FIR was registered for offences punishable under Sections 353, 504, 506 of Indian Penal Code. The Petitioner is merely witness in the said case. She has no right to interfere in the discharge of application preferred by Respondent No.2. The aggrieved party in the First Information Report is the first informant. The Police officer while lodging the FIR has not referred to role of the Petitioner.

8. First Information Report No.582 of 2019 was registered at the instance of Shri Krishna Bhagwan Harugade on 4th October, 2019 for offences under Section 353, 504 and 506 of Indian Penal Code. The first informant is the Police Inspector attached to Powai Police Station. As per First Information Report, on 4th October, 2019, the complainant visited Police Station for duty. He noticed that, the accused was shouting at the woman Police Inspector. He was informed that, he has been brought to the Police Station on information received from his wife relating to the quarrel between wife and husband. He is shouting and creating raucous at the Police Station. The first informant and others tried to convince the accused and told him to explain his grievance. The first informant was informed that his wife has lodged the Non-cognizable complaint against him. The accused shouted and inquired to what complaint is lodged against him. His wife who is an Advocate informed him that, Non-cognizable complaint is registered against him under Section 323, 504 and 506 Indian Penal Code. He abused the police man. He was taken in custody and sent for medical examination. First Information Report was registered vide FIR No.582 of of 2019. On perusal of the FIR, it can be seen that it has been lodged for shouting at the Police Station and abusing the Police Officer attached to the said Police Station. The first informant is the Police Sub-

inspector. Section 353 of IPC relates to assault or criminal force to deter public servant from discharge of his duty under Section 353 reads as follows:-

“353. Assault or criminal force to deter public servant from discharge of his duty —Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”.

on reading the aforesaid penal proceedings, it is apparent that if any person assaults or uses criminal force to any person being a public servant in the execution of duty as public servant or with an intention to prevent deter that person from discharging his duty. Thus it is an independent offence. The Petitioner cannot be termed as victim under the said provision.

9. The Respondent No.2 had preferred an application for discharge and pending that application the Petitioner had moved an intervention in application for discharge application seeking permission to assist the

Public Prosecutor and intervene in application for discharge. It was contended that, Petitioner is present before the Court and she may be permitted to assist the Public Prosecutor and oppose the application for discharge as per Section 301 and 302 of Indian Penal Code. In the affidavit it is also contended that, the Petitioner is a lawyer. She is wife of the accused, she is the original complainant in the Sessions Case No. 316 of 2021. It is upon her complaint that, the concern Police Officers visited the premises where the Petitioner was residing with accused. The accused is facing prosecution under Section 498-A, 406, 504 and 506 of IPC. The application preferred by the accused under Section 227 of Cr.P.C. seeking discharge has no merits.

10. It is pertinent to note that, Sessions Case No.316 of 2021 arises one of C.R. No.582 of 2019 registered for offences under Section 353, 504 and 506 of Indian Penal Code.

11. Section 301 and 302 of Code of Criminal Procedure, 1973 reads as follows:-

“301. Appearance by public prosecutors.(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal. (2) If any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or

Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.”

“302. Permission to conduct prosecution.(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate- General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission: Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted. (2) Any person conducting the prosecution may do so personally or by a pleader.”

Both the provisions are not applicable to support the prayers of the Petitioners. The Petitioner is not co-applicant in C.R. No.582 of 2019. Section 311 of Cr.P.C. relates to power to summon material witness or examine witness present. The provision empowered the Court at any stage of any inquiry, trial or other proceedings under this Court summon any person as a witness or examine any person in attendance, though not summon as witnesses for recall and reexamine any person already examined and the Court shall summon and examine or recall

and reexamine any such person if his evidence appears to be essential to the just decision of the case, by any stretch of imagination. The Petitioner cannot claim that, she is present in the Court and in accordance with Section 311 of Cr.P.C. she could be examine as a witnesses and therefore in such analysis her application to intervene in discharge application be allowed. The Petitioner has no locus to intervene in the discharge application. The first informant is the Police Inspector. The offence relates to obstruction in discharge of duty of public servant. The first informant is the public servant. The Petitioner cannot presume that she is the first informant or victim under Section 2(wa) of the code. None of the criteria of the persons stipulated in the definition of victim incorporated in the aforesaid provisions is applicable to the Petitioner in the present case. The learned Sessions Judge has assigned cogent reasons for rejecting the application preferred by the Petitioner. The apex Court has observed that the victim has a right to hear at the every stage. The Petitioner is neither the informant nor the victim in the present case. Hence, she cannot be granted permission to assist Public Prosecutor to oppose discharge application by intervening in discharge application. No case is made out to interfere in the impugned order.

ORDER

. Writ Petition No.3414 of 2022 is rejected and disposed off.

(PRAKASH D. NAIK, J.)