

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1362 OF 2023
IN WP/1113/2022

TATYASAHEB LIMBRAJ WARE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. Undre Vikram S
APP for Respondents: Mr. S.G. Ghayal
...

CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.

DATE : 20.04.2023

PER COURT :

Heard both the sides.

2. The original petitioner who was seeking change of the Investigating Officer is aggrieved by the disposal of the writ petition on a statement being made by Public Prosecutor that a charge sheet was filed interregnum.

3. The grievance of the petitioner which still persist, as is submitted by his learned advocate is to the effect that though the material was enough to disclose commission of the graver crime punishable under Section 307 of the Indian Penal Code, the charge sheet has been filed for the offence *inter alia* punishable under Section 325.

4. The learned APP submits that it is not that the Investigating Officer has filed some 'B' Summary so that the petitioner could be aggrieved.

Depending upon the material with the charge sheet the trial court has jurisdiction to frame appropriate charge. Even during the course of hearing if it transpires that the evidence discloses commission of a graver crime including one punishable under Section 307 triable by the Sessions Court, the Magistrate has power and jurisdiction to alter the charge and commit the case under Section 323 of the Code of Criminal Procedure. He would submit that doors are not shut to the applicant to invoke all the aforementioned provisions and there is no sufficient and cogent reason to restore the writ petition.

5. We have carefully considered the rival submissions and perused the papers.

6. It would be redundant to observe that depending upon the interpretation by the trial court after taking a stock of the material annexed with the charge sheet, the Magistrate has ample powers to frame the charge appropriately and is not bound by sections mentioned in the charge sheet.

7. Besides, under Section 323 of the Code of Criminal Procedure if it occurs to a Magistrate after commencement of the inquiry or trial that an offence triable by a Court of Sessions has been committed, he can commit the case to the Sessions Court. In the light of these provisions and the principles, according to us, the petitioner can resort to such remedies at an appropriate stage of the trial.

8. The petitioner was merely seeking transfer of the investigation but having found that the investigation was over and a charge sheet was

filed, this Court had disposed of the writ petition. There is no error apparent on the face of the record to take a different view.

9. The application seeking restoration of the Writ Petition is dismissed.

(ABHAY S. WAGHWASE, J.)

(MANGESH S. PATIL, J.)