

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1303 OF 2019

SARUBAI VYANKATRAO BIRADAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Petitioner : Mr. P. R. Harsul h/f Mr. A.
S. Shivpuje

APP for Respondents: Mrs. G. L. Deshpande

...

CORAM : R.M. JOSHI, J

DATE : AUGUST 03, 2023

PER COURT :

1. This Petition takes exception to the order dated 05.04.2019 passed below Exh. 46 in Sessions Case No. 31/2014.

2. The prosecution had filed application exh. 46 before learned trial Court seeking permission to file dying declaration of Laxmibai recorded by Naib Tehsildar on 26.06.2013 on record. It is the contention of prosecution that the said Naib Tehsildar, who recorded statement of the victim, had kept the said dying declaration with himself and hence, the prosecution needs to place the same on record. The said application came to be opposed on the ground that the

said document is not filed along with charge-sheet. It is also contended that it is sought to be filed at belated stage and this likely to cause prejudice to accused.

3. Learned APP has drawn attention of the Court to the judgment of Central Bureau of Investigation Vs. R. S. Pai and another, 2002 (s) SCC 82, wherein it is clearly held that there is no prohibition in producing document at subsequent stage.

4. Learned Counsel for the Petitioners though tried to convince this Court by referring to Section 173(5) of Cr.P.C to contend the document can be filed only along with charge-sheet as contemplated therein. According to him, any document procured during the course of further investigation and filed by way of supplementary charge-sheet under Section 173(8) of Cr.P.C, production of no other document can be allowed.

5. This submission is made contrary to the law laid down by Hon'ble Apex Court in case of C.B.I Vs. R. S. Pai and Anr (supra). It is held therein that normally investigating officer is required to produce

all the relevant documents at the time of submitting charge-sheet. At the same time, as there is no prohibition it cannot be held that additional documents cannot be submitted subsequently.

6. The accused are charged for offences punishable under Sections 498-A, 302, 323, 504 read with Section 34 IPC. There is allegation that accused poured kerosene oil on person of deceased and set her ablaze. She was admitted in Government Hospital. The dying declaration recorded by Executive Magistrate was not placed on record as it was said to have been kept by him with himself. Having regard to nature of allegation, the said dying declaration is material piece of evidence. Genuineness or correctness of said dying declaration cannot be gone into at this stage. It is always open for the defence to cross-examine concern witness as well as other witnesses in relation with this document who are already examined by the prosecution. Thus, no prejudice will cause to the accused if the document is allowed to be placed on record. Keeping the right of the accused open to recall any relevant witness, the impugned order deserves to be

maintained.

7. Accordingly, Petition stands disposed of in above terms.

(R.M. JOSHI, J.)

Malani