

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

**27 CRIMINAL WRIT PETITION NO.1279 OF 2022**

**SHAIKH FARUK SHAIKH MUSA  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. A.N. Barhate Patil  
APP for Respondent 1 : Mr. S.P. Deshmukh  
Advocate for Respondents 2-7 : Mr. Kayyum Najir Shaikh

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**CORAM : S. G. CHAPALGAONKAR, J.  
Dated: October 09, 2023**

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**PER COURT :-**

1. Heard learned advocate appearing for the petitioner, learned APP for respondent no.1 and learned advocate appearing for respondent nos.2 to 7.

2. The petitioner/original informant impugns the order dated 14.1.2022 passed below exhibit 117 in RCC No.80 of 2014 pending before the Judicial Magistrate First Class, Badnapur as well as the order dated 26.7.2022 passed by the Additional Sessions Judge-1, Jalna in Criminal Revision Application No.23 of 2022.

3. The mother of the petitioner had filed an application below Exhibit 117 to add respondent nos. 6 to 8 as accused in RCC No.80 of 2014 by invoking powers under section 319 of the Criminal Procedure Code. It is contended that the FIR was lodged against in all 7 accused persons. Four accused persons are specifically named in the FIR and three

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others were unnamed. According to the petitioner, inspite of persuasion, police authorities failed to include name of respondent nos. 6 to 8, who were offenders in the subject crime alongwith other accused persons.

4. Learned Magistrate, after considering the material on record and conduct of the petitioner, rejected application with specific observation that the application is moved after six years of framing of the charge although, the petitioner caused his appearance in the proceeding through an Advocate. It is further observed that the petitioner failed to lead his evidence for almost six years. The petitioner challenged the order passed by the learned Magistrate before the Sessions Court at Jalna vide criminal revision application no.23 of 2022. The Sessions Court concurred with the observations of the trial Court and further observed that the charge is framed against named accused persons. Further, the charge-sheet do not contain any material against proposed accused. Hence, refused to interfere in the order of the trial court.

5. Mr. Barhate Patil, learned advocate appearing for the applicant submits that power under section 319 of the Cr.P.C. can be exercised any time during the course of the inquiry and trial. Therefore, the application could not have been rejected on the ground of delay. He would submit that after recording of the evidence before the trial court, such power can also be exercised.

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6. Learned advocate appearing for the accused as well as the learned APP for State opposes the impugned order. Section 319 of the Cr.P.C. states as under :-

**S. 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.
2. Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
3. Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
4. Where the Court proceeds against any person under Sub-Section (1) then—
  1. the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;
  2. subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

7. Plain reading of the aforesaid provision would show that discretion is left with the Courts to proceed against any person for the offences alongwith accused persons named in the charge-sheet subject to condition that evidence on record depicts that offence have been committed by such person. In the present case, the trial court as well as the

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revisional court observed regarding conduct of the petitioner. It is to be noted that for six years after framing of the charge, petitioner failed to lead evidence and suddenly such application is moved seeking addition of accused persons u/s 319 of the Cr.P.C. The revisional Court has further observed that from entire charge-sheet, no material can be found against the proposed accused persons. Learned counsel appearing for the petitioner could not point out specific material by which complicity of the respondent nos.6 to 8 in commission of offence can be gathered. Therefore, at present, there is no material before the Court that would call upon to invoke discretion under section 319 of the Cr.P.C. However, after recording of the evidence, if complicity of any person not being accused is found in the commission of offence, the Court has every power to direct his trial with the accused persons.

8. In view of the above, no case is made out to interfere in the impugned order. The writ petition sans merit. Hence, dismissed.

( S. G. CHAPALGAONKAR, J. )

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