

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

951 CRIMINAL WRIT PETITION NO.1695 OF 2022

**RAMCHANDRA DIGAMBAR LOLGE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioners : Mr. Y.V. Kakde
APP for Respondent 1 : Mr. K.S. Patil
Advocate for Respondents : Mr. Mr. Shaikh Ashpak Taher Patel
for R/2, A.S. Barlota for Resp No.3.

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**CORAM : S. G. CHAPALGAONKAR, J.
Dated: October 11, 2023**

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PER COURT :-

1. The petitioners have approached this Court under Article 227 of the Constitution of India impugning the order passed below Exhibit 27 by the learned Judicial Magistrate First Class, Paithan in RCC No.154 of 2003 dated 20.8.2022 by which a show cause notice has been issued to the petitioners, as to why they should not be added as accused persons in the trial.

2. Mr. Kakade, learned advocate appearing for the petitioners submit that section 319 of the Code of Criminal Procedure (for short referred to as Cr.P.C.) provides for power to proceed against persons appearing to be guilty of the offence. The Court which dealing with the trial of an offence may, after recording its satisfaction that proposed accused can also be tried alongwith accused who are already named in the charge-sheet, can exercise such powers. However, for that purpose,

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reasons are required to be recorded. He submit that section 319 of the Cr.P.C. nowhere provides for issuance of show cause notice for addition of the proposed accused persons. By inviting attention of this Court to the impugned order dated 20.8.2022, he submits that no reasons are assigned for issuing show cause notice to petitioners. Therefore, he submits that impugned order is liable to be quashed and set aside firstly for the reason that there is no provision under the Code for issuing show cause notice to the proposed accused persons. Secondly, no reasons are assigned by the trial court for issuing show cause notice to the petitioners.

3. Mr. Kakade in support of his contentions relied upon the judgments of the Supreme Court of India in the matter of Kailash Vs State of Rajasthan and another reported in 2008 SC 1564, Hardeep Singh Vs. State of Punjab reported in 2014 Cr.L.J. 1118 and Sukhpal Singh Khaira Vs. The State of Punjab reported in AIR online 2022 SC 1078.

4. Per contra, learned advocate appearing for the respondent submit that Trial Court has merely issued show cause notice. The petitioners are at liberty to appear before the Court and submit reply to the show cause notice. According to the learned advocate appearing for the respondents, Court has not yet exercised power under section 319 of the Code of Criminal Procedure and the petitioners are given an opportunity to explain their stand. As such, no prejudice is caused to the petitioners. Petition itself is premature. Hence, liable to be dismissed.

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5. Having considered the submissions advanced, it is necessary to refer the provisions contained in section 319 of the Cr.P.C.

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.

6. Perusal of the aforesaid provision would show that the trial court has enabling the powers or discretion to direct the trial of any person not being accused alongwith the accused who are facing the trial, however, with a rider that the Court must find evidence that such person can be proceeded on the basis of the material on record. The Supreme Court of

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India in case of Kailash Vs. State of Rajasthan observed that during the trial it has to appear from the evidence that a person not being an accused has committed any offence for which such person could be tried together with the accused who are also being tried. The key words in this section are “it appears from the evidence”, ‘any person’, “has committed any offence.” It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, discretion under section 319 of Cr.P.C. would be used by the Court.

7. If the aforesaid observations are considered, it is explicit that the trial court has to record satisfaction that the ingredients of Section 319 of Cr.P.C. are complied with and material on record warrants that accused be summoned. The perusal of the provisions of section 319 of Cr.P.C. would show that there is no provision for issuance of show cause notice to the proposed accused. The course is provided to issue summons to the accused persons after recording satisfaction that the person not an accused before the Court can be tried alongwith the accused, who are already facing the trial.

8. Adverting to the impugned order, it is apparent that the trial court issued show cause notice calling upon proposed accused nos.2 and 3 as to why they shall not be added as accused. The course adopted by the trial court is align to established procedure and inconsistent with the provisions contained under section 319 of Cr.P.C. Further, no reasons are assigned for issuing show cause notice. Therefore,
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contentions raised on behalf of the petitioners needs to be accepted. In that view of the matter, the impugned order is liable to be quashed and set aside. Hence, the order.

ORDER

- i. Criminal writ petition is allowed.
- ii. The impugned order dated 20.8.2022 passed below Exhibit-27 by the learned Judicial Magistrate First Class, Paithan in RCC No.154 of 2003 is hereby quashed and set aside. However, the Trial Court is at liberty to pass appropriate orders after recording satisfaction based on evidence on record of trial in terms of section 319 of the Code of Criminal Procedure in light of the observations made above.
- iii. Writ Petition is disposed off.

(S. G. CHAPALGAONKAR, J.)

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