

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.119 OF 2023**

Appaso Rajaram Hakke .. Petitioner
Versus
The State of Maharashtra and anr .. Respondents
...

Mr.Rajendra Patil, for the Petitioner.
Mr. Sachin Hande, for respondent no.2.
Mr.S.R. Agarkar, APP for the State.
Mr.Vinod Dattatray Hasabe, Kavthe Mahankal Police Station.

**CORAM: BHARATI DANGRE, J.
DATED : 18th OCTOBER, 2023**

P.C:-

1 Heard the learned counsel for the applicant, who has assailed the order passed by the Sessions Judge, Sangli on 28/09/2022, the order being passed on an application preferred by the prosecution (Exhibit-25) in Sessions Case no. 115 of 2014, being an application under Section 319 of Cr.P.C to summon the applicant as the proposed accused, who face trial under Section 363, 366 (A) of Indian Penal Code.

2 The background facts would reveal that FIR No. 9 of 2013 was registered with Kavthe Mahankal Police Station on 15/1/2023, on the complaint of one Nanaso Siddhram Khandekar, the father of the victim girl alleging that the accused person has abducted his daughter, aged 17 years on the pretext that he is going to perform marriage with her. This resulted in

invocation of Section 363 and 366(A) of the IPC against two persons, the present applicant Appaso Rajaram Hakke and one Rama Mane.

During the course of investigation, statements of various witnesses were recorded and this included the statement of the victim herself along with her friend on whose mobile the phone call is alleged to have been made, asking the victim to step out of the house to accompany him.

On completion of investigation, the charge-sheet came to be filed and as far as the present applicant is concerned, he came to be discharged under Section 169 of Cr.P.C, and the noting was made that though the applicant face the charge of abducting the minor girl under the pretext of solemnizing the marriage, but since the applicant was working as a constable and recruited in Mumbai Police force, the investigation has revealed that he was on duty on the said date and was not present at the place, from where the victim is alleged to be abducted. The trial however proceeded against Rama Mane.

3 When the trial commenced, the victim stepped into the witness box as PW-2 and she specifically deposed about the incident dated 6/01/2013, when according to her the applicant called on the phone of her friend, who was staying in the neighborhood and she was told that the co-accused Rama Mane was waiting outside her house, and she should accompany him to be taken to the applicant, who was waiting in a Jeep. She was taken by the two accused person in the Jeep to Miraj, the Jeep being driven by one Shivaji Pujari. Thereafter, she was taken to

Pune by railway and the entire details of the journey are given by her before the Court when she testified. She was also cross-examined extensively but she remained consistent on her version, that the applicant accompanied her when she was taken in the Jeep firstly to Miraj and by train from Miraj to Pune.

The deposition of PW-4 the husband of the victim is also recorded.

Another witness PW-5, a grocery shop owner at Chakan has also deposed about Rama Mane.

4 Upon the examination of the aforesaid witnesses, the prosecution moved an application under Section 319 against the accused, who was not charge-sheeted and it was prayed that he shall be arraigned as an accused, as during the course of trial the material as surfaced on record necessitating him being tried for the offence under Section 363 and 366(A) of IPC.

The impugned order is passed on the said application.

5 The Sessions Judge examined the application in the backdrop that on an earlier occasion, the prosecution has chosen not to charge him and he sought his discharge on the ground that he was not present with the victim, as at that time he was discharging his duty in Mumbai. Certain documents to that effect, in respect of the duty chart of the concerned Police Station was also presented. In the charge-sheet it was mentioned that on the date of incident Appaso Hakke was present on duty in Mumbai and there was no sufficient evidence to indict him in

commission of the offence alleged.

6 The Sessions Judge, Sangli on appreciating the evidence of the victim, who accused him, as the person who abducted her by inducing to perform a marriage, and considering the fact that the proof of authenticity of the documents, which were produced by the accused person to the effect that he was serving in Mumbai were found to be deficit, and not conclusive since, there was overwriting in several columns and ultimately in the wake of the power conferred in Section 319, the Sessions Judge, Sangli directed that he shall be added, as the accused no.2 in the matter and by making necessary amendment in the charge-sheet and the charge was also directed to be modified.

7 Section 319 of the Code of Criminal Procedure reads thus:

“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-

(a) the proceedings in respect of such person shall be commenced afresh and the witnesses re- heard;

(b) 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.”

8 Section 169 of Cr.P.C is a power conferred upon the Officer Incharge of the Police Station, to release the accused, when evidence is deficient and the relevant Section reads thus:

“169. Release of accused when evidence deficient- *If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.”*

9 Cumulative reading of the two provisions would clearly indicate that though a person may have been released on the ground that there was no sufficient evidence or reasonable ground of suspicion to justify, he being forwarded to a Magistrate & he is directed to be released on executing a bond with or without sureties, where in the course of any inquiry into or trial, it appears from the evidence, that a person, who not being an accused has committed an offence and he deserve to be tried along with other accused, then it is permissible for the Court to proceed against such a person for the offence, which he appears to have committed.

10 Section 319 prescribe the procedure to be followed upon existence of such a contingency.

Applying the aforesaid provisions, Sessions Judge has rightly granted the application filed by the prosecution under

Section 319 by reasoned order and in particular by considering the deposition of the victim, who is consistent upon her version that she was abducted and forced to accompany the present applicant, who had led the Investigating officer, to the duty slips and on the basis of which, he had inferred, that he was on duty at Mumbai and could not be placed at Kavthe Mahankal in District Sangli from where the victim is alleged to have been abducted.

In any case, on being arraigned as an accused, the applicant will be definitely entitled for all the procedural safeguards, which would include rebutting the case of the prosecution, by producing on record appropriate evidence, which may even include, the proof as regards his attendance on the duty, by examining proper witnesses.

Finding no legal infirmity in the impugned order and upholding the same, the present writ petition is dismissed.

(SMT. BHARATI DANGRE, J.)