



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 664 OF 2024

Anil S/o. Pandhari Wankhade Vs. Lala S/o. Sukhdeo Attote & Ors.

 Office Notes, Office Memoranda of Coram, Court's or Judge's orders
 appearances, Court's orders of directions
 and Registrar's orders

Mr. D.S. Patil, Advocate for the Petitioner.

CORAM : G. A. SANAP, J.

DATED : 21st AUGUST, 2024.

. Heard learned advocate for the petitioner.

2. This criminal writ petition can be disposed of at the stage of notice itself. It is seen that there is no substance in this petition.

3. In this petition, challenge is to the order dated 11.01.2024 (wrongly mentioned as 11.01.2014), whereby the learned Magistrate allowed the application made by the accused for recalling three witnesses. It is stated that the powers under Section 311 of the Code of Criminal Procedure, 1973 (for short, "Cr.PC") exercised by the learned Magistrate was not in accordance with the law. There was no major alteration or addition to the charge. Only the charge under Section 323 read with Section 34 of the Indian Penal Code, 1860 (for short, "IPC") was added.

4. It is to be noted that addition or alteration of charge has been provided under Section 216 of the Cr.PC. As far as the addition of charge under Section 323 read with Section 34 of the IPC is concerned, there is no grievance by the petitioner,

who is the informant. The accused are required to meet the additional charge framed against them. The Court, on alteration of the charge, is duty-bound to safeguard the interest of the accused. As per sub-section 4 of Section 216 of the Cr.PC, if the alteration or addition is such that proceeding immediately with the trial is likely to prejudice the accused or the prosecutor, the Court may either direct a new trial or adjourn the trial for such period as may be necessary. Section 217 of the Cr.PC provides for recall of witnesses when the charge is altered or added.

5. In this case, after addition of the charge under Section 323 read with Section 34 of the IPC, the learned Magistrate reserved the right of the accused to apply for recall of the witnesses already examined. The learned Magistrate, while deciding the application for recall of the witnesses, has made the necessary observations in para No.4 of the impugned order. It is to be noted that the prosecution has examined seven witnesses. The accused applied for recall of three witnesses only. The learned Magistrate was satisfied that the application for recall was not made with an intention to delay the proceeding. In my view, on alteration or addition of the charge, the accused have a right to make a request to the Court for recall of the witnesses already examined in the case. The liberty to recall and cross-examine the witnesses is necessary to ensure a fair trial to the accused. In my view, therefore, there is no substance in this petition. Accordingly, the petition is **dismissed**.

(G. A. SANAP, J.)