



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

CRIMINAL APPLICATION NO. 499 OF 2025

ASHITA BHIMSINGH GAVIT

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. Santram Neharaba Lale Yelwatkar, Advocate for Applicant.

Mr. V. S. Badakh, APP for Respondents-State.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 03rd APRIL, 2025.

P.C.:-

1. Heard learned Advocates appearing for respective parties.
2. The applicant seeks to challenge order dated 23.12.2024, thereby rejecting his application filed below Exhibit-39 in R.C.C. No.67/2023.
3. The applicant/complainant filed application below Exhibit-39 contending that driver of accused no.2 was also involved in the offence. Therefore, he ought to have been added as accused. However, police machinery failed to do so. The applicant accuses Investigating Officer for faulty investigation. The applicant states that infact name of accused driver is mentioned in FIR and charge-sheet.
4. Perusal of FIR and charge-sheet would show that unknown driver is shown as accused. It nowhere reflects that driver is named specifically in either FIR or charge-sheet. The Trial Court observed that complainant recorded her deposition before the Court and she has been partially cross-examined. In entire evidence, there is nothing to show that proposed accused was driver, who

was involved in commission of offence. Therefore, Trial Court concluded that in absence of sufficient material, prayer under Section 319 of the Criminal Procedure Code cannot be exercised.

5. It is trite that Courts can direct to add any person as accused and proceed against such person for offence, in case during course of enquiry or trial of offence it appears from evidence that such person although not made as an accused, has committed any offence. It is, therefore, apparent that, *prima facie*, Court has to form opinion on the basis of evidence tendered before Court that person, who is not named as accused was infact involved in commission of offence and sufficient material is available to proceed against him. In present case, contents of FIR, charge-sheet, so also evidence of complainant nowhere specifies involvement of proposed accused in commission of offence. In result, no fault can be found in impugned order. Hence, Criminal Application stands rejected.

(S. G. CHAPALGAONKAR)
JUDGE