



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

922 CRIMINAL WRIT PETITION NO. 1099 OF 2024

X.Y.Z.

... Petitioner

Versus

- 1) The State of Maharashtra
Through its Principal
Secretary of Home Department,
Mantralay, Mumbai
- 2) The Deputy Superintendent of Police,
Sub-Division Officer, Amalner
Dist. Jalgaon
- 3) The Police Inspector,
Police Station, Parola,
Tq. Parola Dist. Jalgaon

... Respondents

...

Mr. Milind B. Sandanshiv, Advocate for Petitioner
Mr. K. K. Naik, APP for Respondent-State

CORAM : Y. G. KHOBRAGADE, J.

DATE : 03.01.2025

PER COURT :-

1. Heard Mr. Milind B. Sandanshiv, the learned counsel appearing for the Petitioner and Mr. K. K. Naik, the learned APP for the State.
2. The learned counsel appearing for the Petitioner canvassed that on 10.11.2020, the Petitioner lodged a F.I.R.,

alleging that his niece/ victim was studying in B.A. 2nd year at Parola. On 03.10.2020, his niece and nephew visited at his house. On 07.11.2020 at about 11 a.m., he left for market and his wife, nephew and niece (victim) were present at his house. But when he returned home at about 3 p.m., he did not notice presence of his niece/victim. On inquiry, he came to know that at about 2.30 p.m., his niece/victim left his house for bringing some medicine, but she did not return till evening. Though he and his family members took search of the victim but she was not traceable. Therefore, on 08.11.2020, a missing report No. 49 of 2020 was lodged with Parola Police Station.

3. On 08.11.2020, at about 5.30 p.m., the Petitioner came to know that one unknown female has consumed some poisonous substance and is admitted in Primary Health Centre, Parola. Therefore, he visited Primary Health Centre, Parola and confirmed about hospitalization of his niece. Thereafter, he passed information to his sister Sushilabai (Mother of victim) and other relatives. It is the contention of the Petitioner that the Medical Officer attached with the Primary Health Centre, Parola asked him to take the victim for further medical treatment at Civil Hospital, Dhule because the victim was in critical condition. Therefore, the victim was taken in ambulance at

Civil Hospital, Dhule, however, in midway, the victim regained consciousness near Phagne village and was trying to say something. It is further contended that, when he enquired with the victim, she disclosed that, “she was knowing one Shivnandan Shalik Pawar who tried to convince her for friendship, but she declined said proposal of friendship and she was not giving attention and the accused persons namely (1) Shivnandan Shalik Pawar (2) Pappu Ashok Patil (3) Ashok Walji Patil committed rape on her”.

4. The Petitioner further contended that when the victim was hospitalised, he, his sister Sushilabai and his elder niece Harshali came to know that above three Accused persons kidnapped the victim from village Parola and they gave her soporific medicine and under the unconscious state accused have committed rape on the victim and when the victim resisted the accused persons and one unknown female abused her on her caste and assaulted her with fist and blows due to which the victim sustained bodily injuries. The Victim succumbed to injuries on 09.11.2020 while hospitalisation.

5. The learned counsel appearing for the Petitioner canvassed in vehemence that the complainant specifically named three accused persons in F.I.R., however, the Investigating Officer has

filed a charge-sheet against only one accused Shivnandan Shalik Pawar, but failed to file charge-sheet as against remaining three accused persons including Pappu Ashok Patil, Ashok Walji Patil and unknown female accused.

6. The learned counsel for the Petitioner invited my attention to the post mortem report wherein the Medical Officer opined about finding signs of raising forceful penetration of vagina of victim. The injury certificate issued by the General Hospital, Dhule appears about sexual assault against the victim. Therefore, the Investigating Officer could have filed a charge-sheet against the other two accused i.e., Pappu Ashok Patil, Ashok Walji Patil and one unknown lady Ratnabai Gokul Patil.

7. It is further canvassed that the Investigating Officer has filed a charge-sheet against only one accused person- Shivnandan Shalik Pawar but failed to file charge-sheet against other three accused persons i.e., (1) Shailesh @ Pappu (2) Ashok @ Bhura and (3) Smt. Ratnabai Gokul Patil, though they are involved while committing crime as per the disclosure statement made by the victim to the Petitioner/informant and Smt. Sushilabai, (The mother of victim) while shifting the victim to the Civil Hospital Dhule.

Therefore, the Petitioner filed Exh.91 application and prayed for issuance of direction against the Investigating Officer to file charge sheet as against three accused persons whose names are disclosed in the F.I.R.. However, on 01.01.2024, the learned Trial Court passed the impugned order and rejected the application because the Application has been moved after a lapse of 3 years after examination of 18 witnesses, which is illegal bad in law and hence, prayed for quashing and setting aside the same.

8. The learned counsel appearing for the Petitioner placed reliance on the case of ***Bhagwant Singh V/S Commissioner of police and others, (1985) 2 SCC 537***, wherein it has been held that, in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) decides not to take cognizance of the offence and to drop proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. Unnecessary delay on account of the difficulty of effecting service of the notice on the informant cannot be a valid objection against this view because in any case, the action

taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be titled to him under Section 173(2)(i).

9. It is further relied on the case of ***Dhrup Singh V. State of Bihar, (2013) 4 SCC 275***, wherein the Hon'ble Supreme Court observed as under:

“The question was arose whether the Chief Judicial Magistrate was right in issuing the summons to the Petitioners who were named in the FI,R, but not in the charge-sheet? Under these circumstances, the Hon'ble Supreme Court considered the scope of Section 319 of the Criminal Procedure Code and held that even if the Investigation Agency is of the view that no case has been made out against the accused the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance there upon.”

10. In the case in hand, it *prima facie* appears that after due investigation, the Investigating Officer has filed the charge-sheet as against the accused- Shivnandan Shalik Pawar. After framing of charge against the accused, the prosecution examined total 18 witnesses. The prosecution evidence does not reveal about involvement of other accused persons while committing the crime. The Investigating Officer recorded statements of witnesses under Section 161 of the Code of Criminal Procedure. but none of the

witnesses disclosed names of other three accused persons whose names have been disclosed in the F.I.R.

11. Needless to say that the statements of informant (Petitioner) and Sushilabai (Mother of the victim) was recorded under Section 161 of the Criminal Procedure Code. As per the statements of both these witnesses, the Victim made disclosure statement in midway while being shifted from Primary Health Centre, Parola to Civil Hospital Dhule. On perusal of statements of witnesses, i.e. Police Constable who was attached with Primary Health Centre and Civil Hospital, the victim was constantly unconscious. The statement of the Medical Officer attached with Primary Health Centre, Parola appears that when the victim was hospitalised at that time she was in unconscious state. So also, the victim was admitted in Civil Hospital, Dhule in unconscious state. However, the Petitioner and Mother of the victim claimed that when the ambulance reached near village Phagne, the victim regained consciousness and disclosed about rape being committed on her by accused 1) Shivnandan Shalik Pawar (2) Pappu Ashok Patil (3) Ashok Walji Patil.

12. However, as per the statement of the informant and victim's mother, the Medical Officer was accompanying in the

ambulance and was sitting besides driver's seat but the informant and victim's mother did not disclose the fact of victim regaining consciousness to the Medical Officer. The statement of Medical Officer does not suggest that the victim made any declaration to the informant and Sushilabai. Irrespective of the above, the prosecution examined 18 witnesses and some other witnesses remained to be examined. The prosecution is yet to prove Chemical Analysis Report.

13. Section 319 of the Criminal Procedure Code empowers the Court to proceed against other persons appearing to be guilty of offence other than the accused against whom the charge-sheet has been filed. In the case of **Dhrup Singh** cited (supra) the Hon'ble Supreme Court considered the cases of (1) *Hardeep Singh V. State of Punjab*, (2009) 16 SCC 785, (2) *Mohd. Shafi V. Mohd. Rafiq*, (2007) 14 SCC 544, (3) *Rakesh V. State of Haryana*, (2001) 6 SCC 248, (4) *Uma Shankar Singh V. State of Bihar*, (2010) 9 SCC 479 and held that even if the Investigation Authority is of the view that no case has been made out against the accused, the Magistrate can apply his mind independently to the materials contained in the Police report and take cognizance there-upon.

14. Therefore, considering the scope of Section 319, if the prosecution brings substantial evidence to show about involvement of other accused whose names have been disclosed in the F.I.R., they can be prosecuted by taking aid of Section 319 of the Criminal Procedure Code. Therefore, I do not find any merit in the present Writ Petition, hence, the Writ Petition is dismissed.

[Y. G. KHOBRAGADE, J.]

HRJadhav