

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 676 OF 2021

Niwas Sumantrao Dhane

.... Petitioner

Versus

The State of Maharashtra

.... Respondent

Adv. A. P. Mundargi, Senior Counsel a/w Mr. Jayant J. Bardeskar,
Advocate for the Petitioner

Mr. Prasanna P. Malshe, APP, for the Respondent – State.

Mr. Sachin A. Raul, PSI, ACB, Satara – Present.

CORAM : SHIVKUMAR DIGE, J.

DATE : 28th MARCH, 2025.

P.C. :

1. By this writ petition, the Petitioner has challenged the order dated 13th October, 2020 passed by the Special Judge, Satara below Exhibit - 86 in Special (ACB) Case No. 1 of 2014 in Crime No.24 of 2012 registered with Koregaon police station for the offences punishable under Sections 7, 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 (for short “PC Act”) by the said order the learned trial Court has directed to add name of the Applicant as accused in present crime.

2. It is prosecution's case that on 11th November, 2012 original accused – Kumbhar was arrested by the Anti Corruption Bureau, Satara for demanding and accepting of Rs.10,000/- as a bribe from the first informant. Thereafter, charge sheet was filed against the accused - Kumbhar. On 6th February, 2017, the examination-in-chief of PW-1 i.e. first informant was recorded before the learned Special Court. In his evidence, he has stated that there was also demand of bribe by the present Petitioner. After period of three years, the prosecution preferred an application below Exhibit-86 praying for relief under Section 319 of the Criminal Procedure Code, 1973 (for short "Cr.P.C."). The said application is allowed, the learned Special Court has directed that the Petitioner be added as accused, subject to obtaining sanction from the concerned authority within six months.

3. It is contention of learned senior counsel for the Applicant that after eight years of the incident, the Application was filed under Section 319 of Cr.P.C. The learned Special Court has not considered the fact that there was no reference of the Petitioner in the first information report. Without considering this fact, the impugned order has been passed, which is erroneous. Hence, requested to allow the writ petition.

4. It is contention of learned APP that the original accused was serving in Tehsil Office, where the Petitioner was working. The Petitioner was superior of the original accused. The first informant has stated in his examination-in-chief that the Petitioner had also demanded the bribe amount from him for doing the work. On that basis, the learned judge has passed well reasoned order, no interference is required in it, and requested to dismiss the writ petition.

5. I have heard both learned counsel. Perused the impugned order. The learned Judge has passed the order under Section 319 of the Cr.P.C. which read 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.”

6. This section states that even though a person is not named in the charge sheet as an accused person, the trial Court has adequate power to summon such unnamed person.

7. In the present case, admittedly the name of the Petitioner was not mentioned in the FIR. For the first time, the prosecutions has filed application under Section 319 fo the Cr.P.C. after a delay of eight years of the incident that too. After examination-in-chief of the first informant, who was giving evidence before the special Court. The first informant never uttered any word against the Petitioner nor stated demand of bribe by the Petitioner to Investigating Officer. In first information report, there is reference of demand of bribe by the original accused Shri. Kumbhar accordingly trap was led and he was arrested. When there was no reference of the Petitioner in the first information report and there was specific allegations of demand of bribe against the original accused. The Tribunal should have considered this

fact. There is delay of eight years for filing the application. Moreover, the Sanctioning Authority has refused to grant sanction for the prosecution of the Petitioner.

8. Considering these facts, I pass following order:-

ORDER

- i. Petition is allowed.
- ii. The order passed by the learned Special Court below at Exhibit-86 is quashed and set aside.

9. In view of the above, the petition stands disposed of.

(SHIVKUMAR DIGE, J.)