

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.134 OF 2024

Usha Nagarkar ... Applicant
V/s.
State of Maharashtra & Anr. ... Respondents

Mr. Ranjeet M. Pawan, for applicant

Mrs. Kranti T. Hiwrale, APP for the State – respondent
No.1

Mr. Chetan Akerkar, for respondent No.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 8, 2025

PRONOUNCED ON : OCTOBER 14, 2025

P.C.:

1. By this application, the applicant, who is the original accused No. 2, challenges the order passed by the learned Sessions Court invoking powers under Section 319 of the Code of Criminal Procedure, 1973, whereby respondent Rohan Nagarkar has been added as an accused. The applicant contends that the Sessions Court has exceeded its jurisdiction while exercising such power.

2. The facts leading to this application are as follows. The complainant filed a complaint under Section 156(3) of the Code of Criminal Procedure before the learned Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai. The learned Magistrate directed registration of an FIR. Accordingly, on 24 July 2008, M.E.C.R. No.

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9 of 2006 came to be registered by M.R.A. Marg Police Station for offences punishable under Sections 415, 420, 464, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code. Investigation was conducted, and a charge-sheet came to be filed against four persons, namely Haresh Nagarkar, Usha Nagarkar, Amit Barot, and Nayan Gaur.

3. The complainant, Anil Dattatray Nagarkar, claims that he is engaged in the business of shipping, clearing, and forwarding under the name and style of *Unique Co-originator*, having its office at 12, Dixit Road, Vile Parle, Mumbai – 57. The said firm has four partners: (1) Harishchandra Dattatray Nagarkar, (2) Anil Dattatray Nagarkar, (3) Shashikant Dattatray Nagarkar, and (4) Smt. Usha Dattatray Nagarkar. The firm has held a Customs House Agent licence since 1984.

4. The complainant alleges that in the first week of February 2006, he learnt from some business associates that an application had been made to the Customs Department to remove his name from the partnership of *Unique Co-originator*. Upon inquiry, he discovered that his brother Harishchandra and sister Usha had allegedly conspired to remove his and his brother Shashikant's names from the firm. On obtaining certified copies from the Registrar of Firms, he found that, in place of his and Shashikant's names, two new persons, Amit Rameshchandra Barot and Nayan Bhagilal Gaur, had been inducted as partners with effect from 23 June 2005. He therefore filed a complaint before the 38th Court, Ballard Pier, Mumbai, under Sections 415, 420, 464, 465, 468, 471 read with Section 34 of the Indian Penal Code, seeking a direction

under Section 156(3) of the CrPC.

5. After investigation, a charge-sheet was filed. The accused pleaded not guilty to the charges. Thereafter, PW No. 1 – the complainant, and PW No. 2 – Satish Pujari, were examined. Before the cross-examination of PW No. 2 could be completed, an application under Section 319 of the Code came to be filed on 7 April 2018, seeking to array another person as an accused. The said application was rejected by the learned Magistrate by order dated 26 July 2019. Aggrieved by the said order, the complainant filed Criminal Revision Application No. 950 of 2019 before the Sessions Court. The Sessions Court, by its order dated 27 December 2019, allowed the revision and directed that Rohan Nagarkar be added as an accused. The present application challenges that order.

6. Learned counsel for the applicant submitted that the newly added accused has made certain admissions which are favourable to the present applicant, accused No. 2. If the newly added accused is retained in the array of accused, the benefit arising out of those admissions would be lost to the applicant. Hence, even though he is an existing accused, he has locus to challenge the order passed under Section 319 CrPC adding another person as an accused. The counsel argued that the order has been passed without jurisdiction and contrary to law.

7. In support of his submission, learned counsel relied upon the decision of the Supreme Court in *Jagannath Choudhary and Others v. Ramayan Singh and Another* (2002) 5 SCC 654. In that

case, the Supreme Court held that the revisional jurisdiction of the High Court can be exercised in exceptional cases where there is a glaring defect in the procedure or a manifest error on a point of law that has resulted in a gross miscarriage of justice. He submitted that the present case squarely falls within this principle as the Sessions Court, without any legal basis, directed addition of a new accused on weak and uncorroborated evidence.

8. On the other hand, learned counsel for the original complainant submitted that the present applicant, being accused No. 2, has no right to challenge the order passed under Section 319 of the CrPC. According to him, such an order can only be challenged by the person who has been newly added as an accused under that provision. He argued that the applicant, being an existing accused, cannot claim any legal grievance against the inclusion of another person in the array of accused.

9. The learned counsel for the complainant further submitted that the correct test for examining the validity of an order under Section 319 CrPC is whether the material on record discloses evidence stronger than a mere prima facie case against the person sought to be added. He submitted that in the present case, based on the deposition of PW No. 2, there exists clear material showing the involvement of Rohan Nagarkar in the commission of the alleged offences. Hence, the Sessions Court has rightly exercised its powers under Section 319 CrPC, and the present revision application does not deserve interference.

10. I have carefully considered the submissions advanced on behalf of both sides and examined the material on record. The question that arises for determination is twofold. First, whether the applicant, being an existing accused, has locus to challenge the order passed under Section 319 of the Code of Criminal Procedure. Second, whether the Sessions Court has correctly exercised jurisdiction under Section 319 CrPC while directing addition of respondent Rohan Nagarkar as an accused.

11. Section 319 CrPC empowers a Court to proceed against any person not already an accused if, in the course of inquiry or trial, it appears from the evidence that such person has committed any offence for which he could be tried together with the existing accused. This power is extraordinary and must be exercised cautiously, only on the basis of strong and cogent evidence emerging during trial.

12. The first aspect to be considered is whether the applicant, being one of the original accused, has a legal right to challenge the order passed under Section 319 CrPC. Normally, such an order directly affects only the person who is newly added as an accused. However, in exceptional situations, an existing accused can challenge such an order if it has a bearing on his rights or affects the fairness of the trial. The Supreme Court in *Jagannath Choudhary (Supra)* held that revisional jurisdiction can be exercised where there is a glaring defect in procedure or a manifest error of law resulting in a miscarriage of justice.

13. In the present case, the applicant contends that the newly added accused has made certain admissions favourable to his defence. According to the applicant, once the said person is added as an accused, those admissions would lose evidentiary value as admissions cannot be used against a co-accused. The apprehension expressed by the applicant cannot be termed illusory. If the addition of a new accused results in depriving an existing accused of material that forms part of his defence, he would certainly have locus to question such addition. Hence, I find that the applicant is entitled to maintain the present challenge.

14. Coming to the second issue regarding the propriety of the Sessions Court's order under Section 319 CrPC, the legal principles governing such exercise are well settled. In *Hardeep Singh v. State of Punjab* (2014) 3 SCC 92, the Constitution Bench of the Supreme Court held that the degree of satisfaction required for summoning a person under Section 319 must be higher than the standard for framing of charge but lower than that for conviction. The Court must be satisfied that there exists strong and cogent evidence indicating involvement of the person sought to be added.

15. The Supreme Court further observed that the power under Section 319 should not be exercised in a casual or mechanical manner merely because some witness has named another person during examination. The Court must assess whether such evidence, if unrebutted, is capable of leading to conviction.

16. Applying these principles to the present case, it is seen that the learned Sessions Court has allowed the revision filed by the

complainant primarily on the basis of the deposition of PW No. 2 – Satish Pujari. The said witness stated that respondent Rohan Nagarkar had requested him to find a partner for obtaining a customs licence for Harishchandra Nagarkar. PW No. 2 further stated that he later signed the Retirement Deed as a witness. This is the only evidence relied upon by the complainant to seek addition of Rohan Nagarkar as an accused.

17. The evidence of PW No. 2 does not indicate that Rohan Nagarkar was directly involved in the forgery or had any knowledge of the false nature of the Retirement Deed. The statement only shows that he facilitated introduction between persons and requested PW No. 2 to find a partner. Such conduct, even if accepted as true, cannot constitute criminal liability for offences under Sections 415, 420, 464, 465, 467, 468, 471, or 34 of the Indian Penal Code.

18. The material placed before the Sessions Court thus falls short of the standard required for invoking powers under Section 319 CrPC. The Sessions Court overlooked the settled principle that this provision cannot be invoked on vague suspicion or uncorroborated reference to a person's name in deposition. The order suffers from a serious legal infirmity as it does not record any satisfaction that the evidence is such that, if unrebutted, it would reasonably lead to conviction of the newly added accused.

19. The learned Magistrate, in his order dated 26 July 2019, had correctly held that the evidence on record did not disclose sufficient material to summon any additional accused. The

Sessions Court, in reversing that well-reasoned order, has failed to apply the correct legal test and has exceeded its revisional jurisdiction.

20. It is well settled that revisional jurisdiction cannot be exercised to substitute the view of the revisional court for that of the trial court unless the trial court's decision suffers from patent illegality or perversity. In the present case, the Magistrate's order was consistent with the evidence and legal position. Therefore, the Sessions Court had no justification to interfere with it.

21. It must also be noted that the addition of a new accused at a later stage of trial has serious consequences. It delays the proceedings and alters the defence strategy of existing accused. The power under Section 319 CrPC, being discretionary, must always be used to advance justice and not to cause procedural hardship. The facts of the present case do not justify exercise of such power.

22. Having considered the rival contentions and the material available, I am of the view that the order of the Sessions Court dated 27 December 2019 is unsustainable in law. The Sessions Court has acted beyond the limits of its jurisdiction and without any strong or cogent evidence against respondent Rohan Nagarkar.

23. Accordingly, the order passed by the learned Sessions Court in Criminal Revision Application No. 950 of 2019 is quashed and set aside. The order dated 26 July 2019 passed by the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai, rejecting the complainant's application under Section 319 of the

Code of Criminal Procedure, is restored.

24. The Trial Court shall proceed with the trial against the existing accused in accordance with law and uninfluenced by any observations made herein.

25. The Criminal Application is allowed in the above terms. Rule is made absolute.

(AMIT BORKAR, J.)