2025:BHC-AUG:27934

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.2052 OF 2024

Prashant Bhausaheb Patil ….Petitioner

VERSUS

1. The State of Maharashtra
2. Smt. Manisha Sanjay Patil
3. Bhausaheb Bhagwan Patil ….Respondents

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Mr V. D. Hon, Senior Advocate i/b Mr A. V. Hon, Advocate for Petitioner
Mr G. O. Wattamwar, APP for Respondent No.1/State
Mr Baig Mirza Mazhar Javed, Advocate for Respondent No.2
Mr A. D. Sonkawade, Advocate for Respondent No.3

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CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 30 SEPTEMBER 2025
PRONOUNCED ON : 07 OCTOBER 2025

ORDER :-

1. By this petition under Article 226 of the Constitution of India, the petitioner has approached this Court challenging the order dated 05/11/2024, passed by the learned Additional Sessions Judge, Dhule in Criminal Revision Application No.28/2023, thereby allowing the said revision application filed by respondent No.2 and directing to try petitioner and other accused. Petitioner also prays for restoring the order dated 08/06/2023, passed by learned Judicial Magistrate First

Class, Dhule, below Exhibit 16 in Regular Criminal Case No.115/2016 whereby the application for adding the petitioner as accused was rejected.

2. According to the petitioner, he is teacher in secondary school by name Gurudatta Secondary School situated at Sayani, Taluka and District Dhule. According to him, at the time of crime he was present on duty, and therefore, not connected with the alleged crime/ FIR filed by respondent No.2 against respondent No.3 for the offence punishable under Section 324, 447, 323, 504 and 506 of the Indian Penal Code. The copy of printed FIR discloses the name of present petitioner as accused No.2, however, while filing the charge-sheet, the Investigating Officer has filed the charge-sheet only against accused No.1, namely, Bhausaheb Bhagwan Patil and not against the present petitioner. Therefore, on 14/10/2019, the Prosecution filed an application below Exhibit 16 before the learned Judicial Magistrate First Class, Dhule, under Section 319 of Code of Criminal Procedure for adding name of present petitioner as an accused in the said crime. Learned Judicial Magistrate First Class, after perusing record, observed that there is no sufficient material against the petitioner to array him as an accused, and as such, vide order dated 08/06/2023, application below Exhibit 16 was rejected. Being aggrieved by the

order dated 08/06/2023, passed by the learned Judicial Magistrate First Class, Dhule, respondent No.2, who is original informant approached the learned Sessions Judge, Dhule, by preferring Criminal Revision No.28/2023. Learned Additional Sessions Judge, Dhule vide the impugned order dated 05/11/2024, allowed the said revision application and therefore the petitioner has approached this Court for quashing and setting aside the said impugned order.

3. According to the learned Senior Advocate appearing for the petitioner, respondent No.2, being informant was not empowered to prefer Criminal Revision Application under Section 397 of the Code of Criminal Procedure, as initially, application for adding the petitioner as an accused was made by the prosecution before the learned Judicial Magistrate First Class. He states that remedy of filing revision is available to the person aggrieved, which according to him is only the State. He also submits that, at the time of commission of crime, the petitioner who is a teacher was present in the school, and as such, the allegations against him are false and baseless. According to him, there is no material against present petitioner in the FIR, and therefore, the learned Sessions Judge committed grave error in allowing the revision application.

4. Per contra, learned APP and learned Advocate for respondent No.2 have opposed the instant petition vehemently. According to learned Advocate for respondent No.2, the informant is having remedy to approach against the order passed by learned J.M.F.C. by filing revision application under Section 397 of the Cr.P.C. He invited my attention to the contents of FIR, wherein specific role of assaulting the informant at the hands of present petitioner is established. He also submits that there is statement of one eye witness who has also stated in accordance with the contents of the FIR and disclosed the presence of the petitioner at the spot. According to him, the crime took place at 15:30 hours on 15/08/2015. On the said date, there being holiday for Independence Day, and therefore, there was no occasion for the petitioner to go to school in the afternoon hours. The informant has clearly pointed out role of the present petitioner in her report to the Police as well as in her evidence i.e. examination-in-chief dated 14/10/2019. The informant has specifically stated that present petitioner assaulted on her thighs with stick. Learned Advocate for respondent No.2 also submits that accused is named in the FIR and a report under Section 173 of the Code of Criminal Procedure ought to have been filed against the petitioner or he should have been discharged under Section 169 of the Code of Criminal Procedure. In

fact, there is neither charge-sheet against the petitioner nor discharge under Section 169 of the Code of Criminal procedure. Therefore, according to him, learned Additional Sessions Judge rightly allowed the criminal revision application, and as such, said order is correct and no interference is required.

5. The question which arises before this Court is in respect of whether at this stage the ground of alibi taken by the petitioner can be considered. Section 106 of Indian Evidence Act, 1872 i.e. Section 109 of the Bharatiya Saksha Adhiniyam, 2023 states that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Thus, it is for the petitioner to establish his case by adducing evidence before the Sessions Court, and therefore, at this stage, his contention as regards presence or absence on the spot cannot be considered. As regards ground of maintainability of revision petition at the behest of the informant is concerned, the informant, being a victim is having right to be heard and she cannot be asked to await for commencement of the trial for asserting his/her right to participate in the proceedings. The victim has legally vested right to be heard at every step post the occurrence of the offence as the victim has unbridled participatory rights from the stage of investigation till

the culmination of the proceedings in an appeal or revision. Therefore, the victim who is informant, is entitled to prefer revision application against the order of learned J.M.F.C. under Section 397 of the Cr.P.C.

6. It is also pertinent to mention here that, in the judgment reported in **Omi @ Omkar Rathore and another Vs. State of Madhya Pradesh and another**, **(2025) 2 SCC 621** given by Hon'ble Apex Court, the principle as regards Section 319 of the Cr.P.C. came to be summarized as under :-

> "a. On a careful reading of Section 319 of the Code of Criminal Procedure as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the Accused before it to face the trial along with other Accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as Accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an Accused, but not charge sheeted, can also be added to face the trial.
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> b. The trial court can take such a step to add such persons as Accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence.

c. The power of the court Under Section 319 of the Code of Criminal Procedure is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the chargesheet by the police against the person concerned. As regards the contention that the phrase 'any person not being the Accused' occurred in Section 319 excludes from its operation an Accused who has been released by the police Under Section 169 of the Code and has been shown in column No. 2 of the charge sheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the Criminal Court are included in the said expression.

d. It would not be proper for the trial court to reject the application for addition of new Accused by considering records of the Investigating Officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the Investigating Officer hardly matters. If satisfaction of Investigating Officer is to be treated as determinative then the purpose of Section 319 would be frustrated."

7. Thus, the learned Sessions Court has rightly found that there is sufficient material to proceed against the petitioner. Hence, the

order passed by the learned J.M.F.C. came to be quashed and set aside and criminal revision came to be allowed. This Court at the Principal Seat, vide order dated 05/05/2017 passed in Writ Petition No.599/2014, was pleased to observe that under Section 169, if upon an investigation, it appears to the officer in-charge of Police Station that there is no sufficient evidence on reasonable ground of suspicion to justify the forwarding of accused to a Magistrate, such officer shall release the said person on executing a bond, with or without sureties, as such officer may direct to appear, if and when so required before the Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial. However, it is also advantageous to refer to Rule 218 and 219 of the Bombay Police Manual, which prescribes the procedure and guidelines for filing charge-sheet or a final report under Section 173 of the Cr.P.C. As per Rule 219, when there is no sufficient evidence to justify the forwarding of the accused to a Magistrate, the Police Station Officer shall release the said accused person on bail if he is in custody. Thus, Rules of the Bombay Police Manuals as well as provisions of Criminal Procedure Code indicate that the concerned officer in-charge of the Police Station has to either file a report referred to as charge-sheet in Rule 218, or a final report as contemplated under Rule 219 of the

Bombay Police Manual. Needless to state that final report should contain detail reasons for not sending the accused for trial.

8. In the case in hand, though the Investigating Officer has already submitted charge-sheet under Section 173 of the Cr.P.C. however, the same is silent as regards the petitioner. It is made clear that filing of charge-sheet or final report is not an empty formality. Such report should contain all the details for not sending accused for trial, so as to enable the Magistrate to decide what course to adopt i.e. whether accept the report and discharge the bonds or order further investigation or to take cognizance of the offence. As the concerned Investigating Officer has not filled up all the required details pertaining to petitioner, the order passed by the sessions Court in revision is correct and proper, and therefore, requires no interference by this Court. Accordingly, the instant criminal writ petition is dismissed.

[SUSHIL M. GHODESWAR, J.]

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