
(2018) 07 BOM CK 0116

In the Bombay High Court

Case No : Criminal Application No. 4631 Of 2014, 477 Of 2017

Datta S/o Vishvanath Gadhve

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173(8), 300, 319, 482
Indian Penal Code, 1860 — Section 149, 307, 324, 325
Constitution of India 1950 — Article 20(2)

Citation : (2018) 07 BOM CK 0116

Hon'ble Judges : T. V. NALAWADE, J; K. L. WADANE, J

Bench : Division Bench

Advocate : N. S. Kadarale, M. M. Nerlikar, G. G. Kadam

Final Decision : Disposed Off

Judgement

T. V. Nalawade, J

1. The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.36 of 2014, registered in Mukhed

Police Station, District Nanded.Â Both the sides are heard.

2 By making investigation of C.R. No.132 of 2013, registered in the same police station, chargeÂsheet is already filed for offences punishable under

Sections 324, 149 etc. of the Indian Penal Code.Â The said FIR was given by one Vasant.Â Other injured witness and name of Gajanan was

mentioned as a witness.Â Gajanan was not in a position to give FIR and his statement was recorded subsequently in C.R. No.132 of 2013.Â Then

Police recorded one more statement of Gajanan as he had sustained more serious injuries and his statement is treated as FIR of C.R. No.36 of 2014

for offences punishable under Sections 307, 149 etc. of the Indian Penal Code

3 The contentions of the State that more serious allegations are made by Gajanan and so the investigating agency is entitled file separate charge?

sheet on the basis of subsequent statement given by Gajanan is not acceptable as the statement of Gajanan was recorded by Police in C.R. No.132 of

2013 on 29th October, 2013. Similarly, the contention of the learned counsel for Applicants that the further investigation is not possible, new offence

cannot be added, new Accused cannot be added and the Court can use the provision of Section 319 cannot be accepted as investigation is already

made and the power given to Police under Section 173(8) of the Code of Criminal Procedure cannot be disputed.

4 The submissions made by the learned counsel for Applicants about improvements in subsequent statements made by witnesses can be considered

only during trial. If the investigating agency is satisfied about the necessity to add offence and Accused, at this stage, this Court is not expected to

interfere in the matter and appreciate the material collected by Police and give the relief claimed. Filing of two charge sheets against same persons

under different provisions of Indian Penal Code for the same incident is not possible in view of Article 20(2) of the Constitution of India and Section

300 of the Code of Criminal Procedure.

5 The learned counsel for Applicants submitted that the observations made by this Court may be contrary to the reply affidavit filed by the

investigating agency in the present matter. In that case also, the Court is entitled to have its own view and on the basis of the relevant provisions of

the Code of Criminal Procedure, this Court has formed opinion and so the contentions, which may be contrary to the view taken by the Court and

which are present in the reply affidavit, can be of no use to Accused.

6 In the result, Criminal Application No.4631 of 2014 is partly allowed. The FIR No.36 of 2014, registered in Mukhed Police Station, District

Nanded as independent crime on 3rd April, 2014, is quashed and set aside, the said FIR and all the papers of investigation from said FIR can be used

as supplementary statement of Gajanan and other witnesses and further investigation made by Police in view of power given to Police under Section

173 (8) of the Code of Criminal Procedure. The investigating agency is entitled to file supplementary charge sheet in the charge sheet already

filed in C.R. No.132 of 2013 lodged by Vasant. In the supplementary

chargesheet, the investigating agency is entitled to mention additional Sections like 307 and 325 of the Indian Penal Code if they have formed opinion that such charge-sheet needs to be filed and they are entitled to mention the names of additional witnesses and also Accused persons in view of the power given to Police under aforesaid section of the Code of Criminal Procedure. If such supplementary charge-sheet is filed by the Police, the case will be treated as a case filed under Section 307 of the Indian Penal Code and accordingly, the learned Judicial Magistrate First Class is to take further steps. Accordingly, the order is made and Criminal Application No.4631 of 2014 is disposed of.

7 Criminal Application No.477 of 2017, filed by the State for expeditious hearing is also disposed of.