

(2026) 01 BOM CK 1376

In the Bombay High Court, Aurangabad Bench

Case No : Criminal Writ Petition No. 1603 Of 2019

Laxmibai

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 27-01-2026

Acts Referred:

Indian Penal Code, 1860 — Section 34, 447, 448, 451, 453, 456
Code of Criminal Procedure, 1973 — Section 200, 202, 319, 397, 401

Citation : (2026) 01 BOM CK 1376

Hon'ble Judges : Y. G. Khobragade, J

Bench : Single Bench

Advocate : Deepak S. Manorkar, V. M. Chate, A. N. Kakade

Final Decision : Disposed Of

Judgement

Y. G. Khobragade, J

1. Rule. Rule made returnable forthwith. With consent of both the sides, heard finally at the stage of admission.

2. By the present writ petition, the petitioner takes exception to the order dated 25.06.2019, passed by the learned Sessions Judge, Aurangabad in Criminal Revision Application No.286 of 2017, thereby the order dated 09.08.2017, passed by the learned Judicial Magistrate, First Class, Court No.21, Aurangabad, below Exh.48 in Regular Criminal Case No.1149 of 2012, is quashed and set aside and the respondent No.2 / complainant is permitted to add the present petitioner as accused No.3 in the complaint.

3. Respondent No.2 is the original complainant in R.C.C. No.1149 of 2012, wherein he prayed for criminal action against the original accused No.1 Subhash Poonamchand Gangave and accused No.2 Sou. Suman w/o Subhash Gangave for the offences punishable under Sections, 447, 448, 451, 453, 456, 34 of I.P.C., on the ground that, on 13.02.2012, both the accused with the help of relatives of accused No.2, opened the lock of the door of premises which was subject matter

of the complaint. It is also not in dispute that after recording evidence before charge, the respondent No.2 / complainant has filed Exh.48 application under Section 319 of Cr.P.C., claiming that after the police report is called, it has been revealed that the present petitioner/proposed accused Smt. Laxmibai is involved while breaking upon the lock of said premises. On 09.08.2017, the learned Judicial Magistrate, First Class, passed the order below Exh.48 and rejected the prayer of respondent No.2 for impleading the present petitioner as accused No.3 in complaint R.C.C. No.1149 of 2012.

4. Being dissatisfied with said order, the respondent No.2 / complainant filed Criminal Revision Application No.286 of 2017 under Section 397 of Cr.P.C. On 25.06.2019, the learned Sessions Judge, Aurangabad, passed the impugned order and allowed Criminal Revision Application No.286 of 2017 filed by respondent No.2 and permitted for addition of present petitioner as accused No.3 in the said complaint.

5. The learned counsel for the petitioner canvassed that while passing the impugned order, the revisional Court has not issued notice to the present petitioner and no opportunity of hearing was provided. Therefore, the right of the petitioner is prejudiced for want of opportunity of hearing, hence, the impugned order is illegal and bad in law. It is further canvassed that, while passing the order dated 9.08.2017 below Exh. 48, the learned Judicial Magistrate, First Class, specifically recorded findings that the complainant had never disclosed name of the present petitioner (proposed accused) and evidence produced on record do not reveal about involment of the present petitioner/proposed while commission of the crime. Therefore, the learned trial Court rightly rejected the application. However, the learned revisional Court, without issuing notice and without affording an opportunity of hearing, permitted respondent No. 2 to implead the present petitioner as accused No. 3.

6. In support of these submissions, the learned counsel for the petitioner placed reliance on the case of Mohit alias Sonu and another Vs. State of U. P. and another, 2013 AIR (SC) 2248, wherein, in paragraph Nos. 29 to 31, the Hon'ble Supreme Court has observed as under:-

"29. Indisputably, a valuable right accrued to the appellants by reason of the order passed by the Sessions Court refusing to issue summons on the ground that no prima facie case has been made out on the basis of evidence brought on record. As discussed hereinabove, when the Sessions Court order has been challenged, then it was incumbent upon the revisional court to give notice and opportunity of hearing as contemplated under sub-section (2) of Section 401 of Cr.P.C. In our considered opinion, there is no reason why the same principle should not be applied in a case where such orders are challenged in the High Court under Section 482 of Cr.P.C.

30. Recently, a 3-Judge Bench of this Court in the case of Manharibhai Muljibhai Kakadia and Another v. Shaileshbhai Mohanbhai Patel and Others (2012) 10 SCC

517 considered the question as to whether in a case where an order of the Magistrate dismissing the complaint under Section 203 of Cr.P.C. at the stage under Section 200, the accused or a person who is suspected to have committed the crime is entitled to hearing by the revisional court. After considering all the earlier decisions, in the case of P. Sundarrajan v. R. Vidya Sekar (2004) 13 SCC 472, Raghu Raj Singh Rousha v. Shivam Sundaram Promotors (P) Ltd. (2009) 2 SCC 363 and A.N.Santhanam v. K. Elangovan (2012) 12 SCC 321, this Court held as under:-

"53. We are in complete agreement with the view expressed by this Court in P. Sundarrajan, Raghu Raj Singh Rousha and A.N. Santhanam. We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled."

31. The same question came up for consideration before different High Courts some of which we would like to refer hereinbelow. In the case of Sayeed Bhagat and Others v. State of Andhra Pradesh 1999 Cr.L.J.4040, a Bench of the Patna High Court noticed the facts of the case where an application was filed in a criminal case under Section 319 of Cr.P.C. to summon the remaining accused persons who were named by the witnesses. The Magistrate refused the said prayer mainly for want of sufficient evidence. The said order was challenged in revision by the complainant. The revisional court set aside the order of the Magistrate without hearing the petitioners against whom prayer was made for issuance of summons. When the matter came up before the High Court, the Bench held as under:-

"8. In the instant case also though the jurisdiction of the Court to summon a person under Section 319 of the Cr.P.C. cannot be questioned, the revisional Court, in my view should have heard the petitioners before passing the impugned order because the same has prejudiced them."

7. Per contra, the learned counsel for respondent No.2 / original complainant, supported the findings recorded by the learned Sessions Court. The learned counsel for respondent No.2 canvassed that the learned revisional Court considered the record as well as the documents which have been produced by the Investigating Officer under Section 202 of Cr.P.C., which reveals that the present petitioner/proposed accused executed a mortgage-deed in favour of one Shri Tikaram Dhaniram Barathune and handed over possession of the house property against the loan of Rs.1,50,000/- by executing the mortgage-deed. Therefore, permitted to implead the present petitioner as accused in the original complaint.

8. The learned counsel for the petitioner further canvassed that under Section 319 of Cr.P.C., the accused can be impleaded at any stage, if the evidence produced on record shows the involvement of said accused against whom initial F.I.R. was not registered or said accused was not impleaded as accused.

9. The learned counsel appearing for respondent No.2 canvassed reliance on the case of Yadwinder Singh Vs. Lakhi alias Lakhwinder Singh and another, decided on 26.03.2025 in Criminal Appeal arising out of Petition(s) for Special Leave to Appeal (Crl.) No(s). 14822 – 14829 of 2024, wherein the Hon'ble Supreme Court framed the guidelines for exercising the powers under Section 319 of Cr.P.C. and held as under:-

"41. (III) What are the guidelines that the competent court must follow while exercising power under Section 319CrPC?

41.1. If the competent court finds evidence or if application under Section 319CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

41.2. The court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

41.3. If the decision of the court is to exercise the power under Section 319CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

41.4. If the summoning order of additional accused is passed, depending on the stage at which it is passed, the court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

41.5. If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

41.6. If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the court to continue and conclude the trial against the accused who were being proceeded with.

41.7. If the proceeding paused as in para 41.1 above, is in a case where the accused who were tried are to be acquitted, and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

41.8. If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated) trial.

41.9. If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 CrPC, the appropriate course for the court is to set it down for re-hearing.

41.10. On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

41.11. Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

41.12. If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier:

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.'

10. In the case in hand, initially, the present petitioner was not impleaded as accused in complaint R.C.C. No.1149 of 2012. However, after the order is passed under Section 202 of Cr.P.C., the Investigating Officer produced some documents wherein it revealed that, on 19.03.2012, the present petitioner/proposed accused, executed a mortgage-deed in favour of one Tikaram Dhaniram Barathune in respect of house property No.5-10-73 CTS No.19706 sheet No.132 and obtained the loan of Rs.1,50,000/-. Therefore, the learned Sessions Court permitted the respondent No.2 to implead the present petitioner as accused No.3 in the said complaint.

11. It is a matter of record that, on 09.08.2017, the learned J.M.F.C. passed an order below Exh. 48, holding that the complainant never disclosed the name of the present petitioner as being present while breaking open the lock of the premises in question. Therefore, considering the law laid down by the Hon'ble Supreme Court in the case of Yadwinder Singh (supra), even if the Court exercises power under Section 319 of the Cr.P.C. and summoned the accused, such summoning order shall be passed before proceeding further with the trial in

the main case/complaint

12. In the case of Mohit alias Sonu cited (*supra*), it is incumbent on the part of the revisional Court to give an opportunity of hearing to the proposed accused as contemplated under Sub-section (2) of Section 401 of Cr.P.C. However, in the case in hand, it *prima facie* appears that, on 09.08.2017, the learned trial Court passed the order below Exh.48 and declined to permit the present respondent No.2 to implead the present petitioner as proposed accused. However, the learned Sessions Judge while exercising the revisional powers under Section 397 Cr.P.C., without issuing notice to the present petitioner/proposed accused, permitted the respondent No.2/complainant to implead the present petitioner as accused in the complaint without providing opportunity to defend the cause which is mandatory under Section 401(2) of Cr.P.C. Therefore, to my judicious conscious, the impugned order is not sustainable in the eyes of law. Hence, it needs to be quashed and set aside. Accordingly, I proceed to pass the following order:-

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 25.06.2019, passed by the learned Sessions Judge, Aurangabad in Criminal Revision Application No.286 of 2017, is hereby quashed and set aside.
- (iii) The Criminal Revision Application No.286 of 2017 is hereby restored on the file of learned Sessions Court, Aurangabad. The matter is remanded back to the revisional Court for deciding afresh on its own merits.
- (iv) The learned Sessions Judge shall issue notice to the present petitioner and shall provide opportunity of hearing and then shall pass the order on its merit.
- (v) The Writ Petition is disposed off. Rule is made absolute in above terms.