
(1999) 04 BOM CK 0062

In the Bombay High Court

Case No : Criminal Miscellaneous Application No's. 3189 and 3190 of 1998 in Cri. W. P. No's. 1196 and 1209 of 1998 & Criminal Miscellaneous Application No's. 3189 and 3190 of 1998 in Criminal Writ Petition No's. 1196 and 1209 of 1998

Natwarlal D. Rathod and others

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 21-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Prevention of Corruption Act, 1988 — Section 13(1)(d), 19, 7

Citation : (2000) 5 BomCR 514 : (1999) 3 MhLj 23

Hon'ble Judges : P.S. Patankar, J

Bench : Single Bench

Advocate : M.M. Unnikrishnan, for the Appellant; S.G. Deshmukh, Assistant Public Prosecutor, for the Respondent

Judgement

P.S. Patankar, J.—The three petitioners herein are the persons who are ordered to be added as accused Nos. 3 to 5 by the learned Special Judge for Greater Mumbai exercising power u/s 319 of the Code of Criminal Procedure.

2. The learned Special Judge for Greater Mumbai at Mumbai in Special Case No. 41 of 1995, entertained the application filed by accused No. 1 and passed the order directing petitioners to be joined as accused Nos. 3, 4 and 5 in the criminal proceedings and further directed CB1 to obtain the necessary sanction u/s 19 of Prevention of Corruption Act, 1988 against them.

3. CBI filed the charge-sheet against 2 accused persons viz. Bhupendra N. Sonavaria and Sahebrao S. Jagtap. It was filed under provisions of section 7 read with section 13(1)(d) read with section 13(2) of Prevention of Corruption Act, 1988. On 17-10-1996 the learned Special Judge passed the order directing these petitioners to be joined as accused Nos. 3 to 5 along with another accused Radheshyam C. Naik as accused No. 6. It was observed that there was evidence

against them, but the Investigating Officer has arbitrarily chosen not to implead them. Further orders were passed on 11-2-1997 and 27-3-1997 by the learned Special Judge directing the CBI to obtain the sanction as required from the competent authority.

4. On behalf of the petitioners Misc. Application No. 246 of 1998 came to be filed in Special Case case praying that the process issued be recalled against them. (This was heard along with Misc. Application No. 356 of 1998 filed by accused No. 6). However, the learned Judge by order dated 29-7-1998 declined this on the ground that it is not possible for him to modify or vary the order dated 17-10-1996.

5. The First Information Report was submitted by one Rajesh Arora. It is against N.D. Rathod (petitioner No. 1) and Vishwas Gosawi (petitioner No. 3) and one Sahebrao (accused No. 2). It is mentioned that that these 3 persons along with Radhyesham C. Naik and Shri Vaidya (petitioner No. 2) are charging Rs. 17 per parcel and taking the said amount as a bribe. It is mentioned that on the earlier day his brother had gone to the railway station for booking the parcels and paid the amount to these three persons and he apprehended that when he goes on the next day they may demand it.

6. Admittedly except this initial information given by the complainant Rajesh Arora, there is nothing against these applicants. The verification of panchanama mentions that these applicants (accused Nos. 3, 4 and 5) were not even on the spot. The trap panchanama dated 25-1-1995 only shows the involvement of the accused Nos. 1, 2 and 6 (Naik). Therefore, at this stage there is no material or evidence for enabling the learned Judge to exercise the powers u/s 319 of Criminal Procedure Code. Further, I find that it was done only on the basis of the allegations made in the application filed by the accused No. 1. There was no basis whatsoever to pass order dated 17-10-1996. Further, there can be no mandate issued to the CBI to obtain sanction from the Competent Authority against them.

7. In view of the above I pass the following order :

As far as these petitioners are concerned, the orders dated 29-7-1997 and 17-10-1996, 11-2-1997, 27-3-1997 and 29-7-1998 are set aside.

It is made clear that in case evidence is led and it is found that these petitioners are involved in the crime the learned Judge shall be free to pass the order u/s 319 and direct CBI to consider obtaining necessary sanction for prosecution from competent authority.

The petition is disposed of accordingly.

8. Order accordingly.