
(2014) 03 BOM CK 0007

In the Bombay High Court

Case No : Criminal Writ Petition No. 289 of 2014

Rajni Vishram Patil

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 319

Citation : (2014) ALLMR(Cri) 4109

Hon'ble Judges : A.M. Thipsay, J

Bench : Single Bench

Advocate : Salunke Sudarshan J., Advocate for the Appellant; D.N. Salvi and Alok Sharma, Standing Counsel, Advocate for the Respondent

Judgement

A.M. Thipsay, J.—Heard Mr. S.J. Salunke, the learned counsel for the petitioner. Heard Mr. D.N. Salvi, the learned counsel for the respondent No. 1 - C.B.I. The respondent No. 2, who is in prison, is reported to have been served with notice. Heard Mr. S.R. Palnitkar, the learned Additional Public Prosecutor for the State of Maharashtra. By consent of the learned counsel for the petitioner, in view of the controversy involved, Rule is issued only against the respondent Nos. 1 and 3. By consent of the learned counsel for the petitioner, the learned counsel for the respondent No. 1 - C.B.I. and the learned Additional Public Prosecutor, Rule is made returnable forthwith. By consent, taken up for final hearing forthwith.

2. The petitioner is the widow of Vishram Patil, regarding whose murder, Sessions Case No. 8 of 2006 is pending before the Sessions Court at Jalgaon. The respondent No. 2 is one of the accused in the said case. There are two more accused in the case whose trial has been separated. The petitioner has been, from the very beginning, making a grievance that two persons - Gajendrasingh Patil and Ulhas Patil - who were the main accused, in as much as the murder was committed allegedly at their instance, were not shown as accused in the case and were not being prosecuted. She, therefore, made a number of applications before the trial Court and even before this Court from time to time seeking

various reliefs, with the ultimate object of ensuring that the said two persons - believed to be perpetrators of the offence - are also prosecuted. Though the petitioner was not cited as a witness, on her application, she has been examined during the trial, as a Court witness.

3. The trial of the respondent No. 2 is coming to an end. He is now to be examined under section 313 of the Code of Criminal Procedure (hereinafter referred to as "the Code").

4. The petitioner has made an application (Exhibit 610) purportedly under the provisions of Section 319 of the Code praying that the said Gajendrasingh Patil and Ulhas Patil be added as accused persons as contemplated under Section 319 of the Code. That application has been filed on 19th December, 2013. The application remained pending and the trial proceeded further. The petitioner then made an application (Exhibit 620) stating that the trial of the respondent No. 2 was concluding, and that, the application under section 319 of the Code (Exhibit 610) needed to be decided before the conclusion of the trial. It appears that the respondent No. 2 objected to the said application and submitted that his examination under section 313 of the Code be carried out. It appears that the learned counsel for the C.B.I. submitted that though the provisions of Section 319 of the Code were misinterpreted by the petitioner, the prosecution would leave the decision on that issue to the discretion of the Court i.e. deciding whether the application at Exhibit 610 should be decided prior to the recording of the statement of the respondent No. 2.

5. The learned Additional Sessions Judge rejected the application filed by the petitioner and held that the application at Exhibit 610 - i.e. the application for proceeding against two persons under the provisions of Section 319 of the Code could be decided after the conclusion of the trial. The learned Judge appears to have passed the common order dealing with several pending applications and clause (d) of the operative part of the said order which deals with the application at Exhibit 610, reads as under:-

"(d) It is hereby clarified that, Application filed by the De-facto Complainant at Exhibit No. 610 will be taken for hearing after conclusion of trial of Accused No. 1 Raju Sonawane."

The petitioner is aggrieved by the said order and has approached this Court invoking its constitutional jurisdiction.

6. With the assistance of the learned counsel for the petitioner and the learned counsel for the C.B.I., I have gone through the Petition and the annexures thereto. Mr. Salvi has tendered a copy of the written submission filed by the prosecution in reply to the application Exhibit 620. The same is taken on record.

7. The crucial issue is whether the Court can postpone the hearing and defer a decision on an application to proceed against some person or persons in exercise of the powers under section 319 of the Code and say that it would decide it after

the conclusion of trial, in the course of which such an application has been made.

8. It is not difficult to see that the answer must necessarily be in the negative. Section 319 of the Code itself indicates that the power contemplated therein is to be exercised in the course of any inquiry into or trial of an offence, as the case may be. In this case, evidence has been recorded in the trial of the respondent No. 2 and not in the trial of the other two accused, whose trial has been separated. It is on the basis of the evidence adduced against the respondent No. 2 during his trial, that a claim has been made that the said two persons should be proceeded against. Therefore, the decision in that regard was necessarily required to be taken before the conclusion of the trial against the respondent No. 2. Once the trial against the respondent No. 2 would be concluded, there would be no evidence before the Court "from which it would appear to the Court" that the said two persons could be tried along with respondent No. 2. A simple reading of section 319 makes it clear that the decision in that regard is to be taken in the course of trial.

9. If the learned Judge was concerned about the delay in disposal of the trial against the respondent No. 2, he could have after deciding the application at Exhibit 610, again separated the trial of the respondent No. 2 and the newly added accused, if at all, he would form a view that they could be tried along with respondent No. 2.

10. Trying the respondent No. 2 separately from the other accused or even from any other persons to whom the Court might think it fit to add as accused would be an entirely different aspect of the matter but, when a contention has been raised that "on the basis of the evidence adduced during the trial of the respondent No. 2, two more persons can be proceeded against in view of the provisions of section 319 of the Code," the decision in that regard must be arrived at before the conclusion of the trial against the respondent No. 2.

11. The impugned order is patently illegal. In para 17 of the impugned order, the learned Judge has observed as follows:-

"It is pertinent to note that, after conclusion of trial of Accused Raju Sonawane, the Record & Proceeding of Sessions Case No. 8 of 2006 will not round up. The trial will be proceeded against remaining two Accused namely Liladhar Narkhede and Damodar Lokhande according to Law. Therefore, the arguments advanced by the learned Advocate for the De-facto Complainant Smt. Rajani Patil that, after concluding of trial of Accused Raju Sonawane, this Court would become functus officio to decide Application Exhibit No. 610 is not acceptable at all."

This is patently erroneous. The evidence adduced during the trial against accused Raju Sonawane cannot be construed as evidence in the trial of the other two accused and obviously, the prosecution would be required to adduce evidence afresh in their trial. What would be the evidence, as would be adduced in the trial against the said accused and whether such evidence would give rise to a claim that said Gajendrasingh Patil and Ulhas Patil could be tried along with them,

cannot be anticipated. What the learned Judge apparently wants to do is to consider the evidence adduced during the trial of Respondent No. 2 Raju Sonawane for deciding whether the said two persons could be tried together - not with accused Raju Sonawane - but with accused Liladhar Narkhede and Damodar Lokhande.

12. The learned counsel for the respondent No. 1 submitted that the C.B.I. is ready to argue an application at Exhibit 610 and there is no difficulty, if the application is heard and decided before the trial against the respondent No. 1 is concluded.

13. Moreover, there is absolutely no reason for deferring the decision on the said issue. The trial Court has made a factually incorrect statement saying that "by filing its say at Exhibit 625 C.B.I. has strongly opposed the application.....at Exhibit 620." (para 5 of the impugned order). Since it was submitted before this Court that C.B.I. has no objection whatsoever to have the application at Exhibit 610 being decided before recording of the statement of respondent No. 2, I have examined the copy of Exhibit 625 produced by the learned counsel for the C.B.I. It is clearly mentioned therein that the prosecution was leaving the decision on the issue to the discretion of the Court, and therefore, where did the learned Judge read the "strong opposition of the C.B.I." in their reply Exhibit 625, is difficult to understand.

14. Though the respondent No. 2 has not been heard, he would have no say in the matter, regarding the decision that is required to be taken on the application Exhibit 610. If the application is allowed, he can certainly ask the trial Court to again separate the trial, which the trial Court is bound to do considering the advanced stage of trial as against him, the period spent in custody by him so far, and the concern, which the trial Court already feels regarding the early disposal of his case.

15. Mr. S.J. Salunke, the learned counsel for the petitioner, however, submits that he would not insist on the trial Court deciding the application at Exhibit 610 before the examination of the respondent No. 2 under section 313 of the Code, but would only urge that the same should be decided before the conclusion of the trial.

16. In the result, the Petition is allowed in the following terms:-

The trial Court shall consider and decide the application filed by the petitioner i.e. the application at Exhibit 610 before the conclusion of trial of the case against the respondent No. 2.

17. The Petition is disposed of in the aforesaid terms. Rule is made absolute accordingly.