



ORDER BELOW EXHIBIT – 35

(State of Maharashtra Vs. Parshuram Tukaram Bhagwat)

1. By filing present application the original informant (Bank of Maharashtra, Gopalwadi Branch through its DZM Mr. Amit Chandan) through learned Special APP is seeking alteration or addition of charge already framed below Exh.27 vide Section 216 of CrPC (now Section 239 of BNSS, 2023) and addition of accused vide Section 319 of CrPC (now Section 358 BNSS, 2023).
2. The accused by filing say below Exh.37 has taken strong objection.
3. Heard Ms.R.A.Waikar, learned advocate for the original informant, Smt.C.S.Bhosale, learned Special APP for the State and Mr.S.D.Pansare, learned advocate for the accused respectively.
4. Perused the application, say thereon, documents on record and also entire charge-sheet, charge framed below Exh.27 by my learned predecessor in office. Perused written notes of argument below Exh.38 submitted by Ms.R.A.Waikar through learned Special APP and authority relied by learned advocate for the accused.
5. Following points arise for determination of present application and I have recorded my findings on them with reasons as under :

Sr. No.	Points for Determination	Findings
01.	Whether the charges already framed are required to be altered or some additional charges are required to be framed ? If yes, what charges are required to be additionally framed or altered ?	...No.
02.	Weather the prosecution has made out the case for arraying and summoning additional accused vide Section 319 of CrPC (now Section 358 of BNSS, 2023) ? If yes, who are required to be arrayed or summoned to be additional accused ?	...No.
03.	What is final order ?	...As per the final order.

-: REASONS : -

6. In short, it is the contention in the application, oral and written notes of argument of Ms.R.A.Waikar, learned advocate for the original informant and learned special APP for the State that the informant has given Draft Complaint to the police officials on 02/08/2023 and in that complaint he has specifically mentioned that the accused Parshuram Bhagwat has used the rout for money flow through his relatives Bank Accounts namely 1) Manisha Parshuram Bhagwat, 2) Sachin Tukaram Bhagwat and 3) Sindhu Maruti Bhagwat. It is further contended that in the Draft Complaint it is also mentioned the user ID and password of the bank officials is used and everywhere it is mentioned that by using ID and password of bank officials the accused did fraudulent activity. Therefore, it is necessary to add the

charges against the accused under the Information Technology Act, 2000. As the aforesaid relatives of the accused also co-operated and involved in the crime and it is a conspiracy against the Bank, so in the interest of justice, crime be registered against the aforesaid relatives of the accused and charges against them be framed. It is further prayed that charges under Sections 43 & 66 of the Information Technology Act, 2000 and Sections 409, 120-B r.w. 34 of IPC be added in the proceeding.

7. On the contrary, it is the contention in the say (Exh.37) and oral argument of Mr.S.D.Pansare, learned advocate for the accused that alteration or addition of charges can only be considered after there is a sufficient material before the court and the same must be based on evidence or material on record. However, in the present, case no such material has been brought before the Court to justify the proposed alteration or addition. As per Section 319 of CrPC, the court cannot add a person as an accused before recording of the evidence, therefore, Section 319 of CrPC can be involved only after some evidence has been recorded and not merely based on police papers or material in the charge-sheet. Mere transfer of money to the account of some other person's account by the accused can not by itself be construed as evidence of their involvement in the alleged offence and whether the said persons are actually connected with the commission of the crime can be determine only after the available evidence examined and verified by the court. Present application is premature and unsustainable in the law as the prosecution has not yet placed any prima facie evidence on record to show that any offence under the Information Technology Act is made out. That the attempt to add the

names of relatives of the present accused in the case is wholly arbitrary, mala-fide and violative of Article 21 of the Constitution as it infringes the fundamental right of life and personal liberty of the persons who have no nexus or connection with the alleged offence.

8. He further submitted that mere allegations without supporting evidence cannot be the base to implead persons as accused, especially when they were not named in the FIR nor any cogent material has been produced during the investigation to justify such inclusion. He further submitted that as per Section 216 of CrPC any alteration in the charge or inclusion of new accused must be founded upon evidence disclosed during trial or investigation and not on mere conjecture or subsequent allegations unsupported by record. Hence, he prayed to reject present application.

9. Mr.S.D.Pansare, learned advocate for the accused relied upon the authority of the Hon'ble Bombay High Court in the case of Sunil Pandurang Mantri Vs. State of Maharashtra & Ors. (2024 : BHC-AS : 22789):(2024 SCC OnLine Bom. 1606) to buttress his contentions.

10. In the present matter, the original informant tried to invoke powers of the Court under Sections 216 & 319 of CrPC. Therefore, for ready reference it is beneficial to quote the provisions of Sections 239 & 358 of BNSS which are *pari materia* of Sections 216 & 319 of CrPC.

Section 239 of BNSS, 2023 (*pari materia* of Section 216 of CrPC)

Court may alter charge.

239. (1) Any Court may alter or add to any charge at any

time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

Section 358 of BNSS, 2023 (*pari materia* of Section 319 of CrPC)

Power to proceed against other persons appearing to be guilty of offence.

358. (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such

Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

11. Perusal of Section 239 of BNSS of 2023, it appears that the Court can alter or add any charge at any time before the judgment is pronounced.

12. Perusal of Section 358 of BNSS of 2023, it appears that the Court can add any person, not being the accused before it, but against whom there appears, during trial, sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused.

13. A beneficial reference can be taken of the authority of the Hon'ble Supreme Court in the case of Dr. Nallapareddy Sridhar Reddy Vs. State of Andra Pradesh & Ors. ((2020) 12 SCC 467) wherein the Hon'ble Supreme Court considering previous precedents in para 21 observed as follows :

“21. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words “at any time before judgment is pronounced” in Sub-Section (1) empowers the court to exercise its

powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.”

14. I have also minutely perused the authority in the case of **Sunil Pandurang Mantri Vs. State of Maharashtra & Ors.** (supra) relied by the learned advocate for the accused, wherein the Hon'ble Bombay High Court in para 16 & 17 observed as follows :

“16. The provisions of Section 319 of the Code empower the Court to proceed against the person, who is not an accused, if in the course of any inquiry into, or trial of an offence it appears from the evidence that, such person appears to have committed an offence. Evidently, Section 319 vests power in the Court so as to equip the Court to do justice by proceeding against the culprit, even if such person was not sent for trial. Even where the Investigating Agency does not send the person, who

appears to be privy to the crime, the Court is not rendered powerless and, in an appropriate case, the Court may proceed against such person if it appears from the evidence that he may have committed the offence for which the co-accused is/are already facing the prosecution.

17. From the phraseography of Section 319(1) of the Code, the conditions for exercise of the powers by, and limits of jurisdiction of, the Court are also self evident. The power is, in a sense, of extra-ordinary in nature. The Court must record the satisfaction that the person, who is not sent as an accused, appears to have committed the offence. Such satisfaction must be recorded on the basis of evidence. Such being the nature of the power, it has to be exercised with care and circumspection and not in a casual and mechanical manner. The avowed purpose of vesting the power in the criminal Court is to equip the Court to do justice.”

15. The Hon’ble Bombay High Court in the supra authority referred Constitution Bench Judgment of the Hon’ble Supreme Court in the case of **Hardeep Singh Vs. State of Punjab & Ors.**((2014) 3 SCC 92) wherein the Hon’ble Constitution Bench considered the following question :-

“Question (iv)- What is the degree of satisfaction required for invoking the power under Section 319 CrPC ?

After an elaborate analys, the Hon’ble Supreme Court answered the question and postulated the legal position as under :-

"93. Section 319(1) CrPC empowers the court to proceed against other persons who appear to be guilty of offence, through not an accused before the court. The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof."

105. Power under Section 319 CrPC is a discretionary and an extra- ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC In Section 319 CrPC the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words " for which such person could be tried together with the accused. " The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.

117.5 Though under Section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly

summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different."

16. In the light of dictum in the supra authorities and provisions of Sections 239 & 358 of BNSS, 2023 (*pari materia* of Sections 216 & 319 of CrPC respectively), I am perusing the application, record and proceeding of the present matter.

17. I have gone through the record of the proceeding. I have also perused entire charge-sheet and documents submitted with fehris.

18. Perusal of the record, it appears that on 21/11/2023 my learned predecessor has pleased to frame charge against the accused below Exh.27 for offences punishable under Sections 420, 408, 465, 467, 468, 472 & 474 of IPC. Needless to mention here that when this Court issued summons to the original informant, present application came on record on 24/07/2025. However, due to filing of present application, yet none of the prosecution witness has been examined.

19. In the present matter, the original informant by filing present application is seeking alteration/addition of charge against the accused for offence punishable under Sections 43 & 66 of the Information and Technology Act, 2000 and Sections 409 & 120-B of IPC. In respect of offence punishable under Sections 43 & 66 of the Information and Technology Act, 2000, it is alleged in the FIR that the accused has used user ID and password of the bank officials to commit the alleged offence. Perusal of the statements of witnesses (under

Section 161 of CrPC) namely Tushar Kisan Kale, Rajvindar Bhajansingh Kaler, Sagar Santosh Ambekar (bank employees of the relevant period), it appears that in their police statements they alleged that since 2018 the accused by using user ID and password and the computers of the bank employees committed alleged offence. Perusal of statement of witness (under Section 161 of CrPC) namely Padmakar Ramchandra Barve, it appears that in his police statement he alleged that on 01/05/2018 the accused was merged from Shubham Caters Company to King's Enterprises Company, Sadashiv Peth, Pune and he was kept at Bank of Maharashtra branch Gopalwadi, Daund on contract basis for house keeping as he was working there. However, on the basis of mere oral statements of the bank employees in absence of any strong proof of using user ID, password and the computers of the bank employees, charge for offence punishable under Sections 43 & 66 of the Information and Technology Act, 2000 cannot be framed. There is no sufficient material to frame charge against the accused for offence punishable under Sections 43 & 66 of the Information and Technology Act, 2000.

20. Upon query learned advocate for the original informant as well as learned special APP failed to show any document from fehris to support the allegation in the FIR that the bank has made contract with King's Enterprises Company in order to avail house keeping services and to show that the accused is employee of the said King's Enterprises Company and he was entrusted with the property of bank or any domain over the property in his capacity as the banker or agent. On perusal of fehris I do not found any copy of contract as alleged in the FIR. Therefore, charge in respect of offence punishable under Section

409 of IPC cannot be framed against the accused as there is no any sufficient material for the same.

21. By way of present application, the original informant is also seeking addition of accused i.e. the relatives of the accused namely Manisha Parshuram Bhagwat, Sachin Tukaram Bhagwat and Sindhu Maruti Bhagwat on the ground that the accused transferred misappropriated money in their account. On the cost of repetition, it is necessary to mention here that till date, none of the prosecution witness has been examined. Therefore, merely on the material collected i.e. account statements of the aforesaid persons (relatives of the accused) they cannot be made accused and summoned in the present proceeding. There is no any evidence on record of showing any active involvement of the relatives of the accused in commission of the alleged offence. Therefore, I found substance in the argument of the learned advocate for the accused that present application is premature and not tenable. Thus, I answered point Nos.1 & 2 in the negative and in the result, proceed to pass the following order :

:- ORDER :-

1. The application is rejected.
2. No order as to costs.

Date : 22/12/2025.
Place : Daund.

(G.S.Badgujar)
Judicial Magistrate First Class,
(Court No.3), Daund.

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment/Order are same word to word, as per the original Judgment/Order.

Name of Stenographer	Shri. S. B. Khule (L.G.)
Name of Court	3 rd Jt. CJJD & JMFC, Daund.
Date of Dictation	22/12/2025
Judgment/Order signed by the PO on	22/12/2025
Judgment /Order uploaded on	22/12/2025