

MHRG030013342025



R.C.C. No. 121/2025

(The State Through Uran Police Station
Vs. Mayur Kashinath Gharat)

CNR No. MHRG030013342025

:: COMMON ORDER BELOW EXH. NO. 83 & 84 ::

01. This application has been filed by the complainant under Section 340 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The complainant has alleged that FIR No. 23/2010 was registered for offences punishable under Sections 323, 504, 506(2), and 509 read with Section 34 of the Indian Penal Code against three accused persons, namely, Mayur Kashinath Gharat, Kashinath Gharat, and Nutan Gharat. The Investigating Officer filed a report under Section 169 of the Code of Criminal Procedure on 16/08/2010. The Hon'ble Judicial Magistrate First Class accepted the said report without calling for the say of the informant and discharged two of the accused persons, namely, Kashinath Gharat and Nutan Gharat.

02. After completion of the investigation, the charge-sheet was filed against Mayur Gharat. Subsequently, the evidence of four witnesses has been recorded. Upon consideration of the said evidence, it appears that the involvement of the other accused persons is also disclosed. Therefore, it is prayed that they be summoned/arrayed as accused under Section 319 of the Code of Criminal Procedure or

under Section 340 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

03. A similar application has been filed on behalf of the learned A.P.P. under Sections 216 and 319 of the Code of Criminal Procedure. She contended that the accused is presently facing trial for the offence punishable under Section 509 of the Indian Penal Code. Upon consideration of the evidence of four witnesses, it appears that the witnesses have alleged that the accused had scuffled with them and had also threatened them with dire consequences. Therefore, the offences punishable under Sections 323, 504, and 506 of the Indian Penal Code are also attracted against the accused. She further contended that the witnesses have deposed that the parents of the accused had also abused and threatened the witnesses; therefore, the offences punishable under Sections 504 and 506 of the Indian Penal Code are also attracted against Kashinath Gharat and Nutan Gharat. Accordingly, she prayed that the accused Kashinath Gharat and Nutan Gharat be summoned under Section 319 of the Code of Criminal Procedure and that the charge against Accused No. 1 be altered, and additional charges under Sections 323, 504, and 506 of the Indian Penal Code be framed against Accused No. 1.

04. I have perused the say of the Investigating Officer at Exhibit 87. He has contended that, on the basis of the statements of independent witnesses and the material available to him, there was no evidence against accused Kashinath Gharat and Nutan Gharat. Accordingly, he filed a report before the Hon'ble Judicial Magistrate First Class seeking deletion of the names of

Accused Nos. 2 and 3.

05. He submitted that as per the statements under Section 161 of the Code of Criminal Procedure, there was no sufficient evidence against Kashinath Gharat and Nutan Gharat. Therefore, the charge-sheet was filed only against the accused Mayur Gharat. He further contended that, after filing the report, notice was issued to the original complainant and informant, and after granting them an opportunity of hearing, the Court was pleased to delete the names of the said accused. He also contended that a cross-complaint had been filed against the complainant and the witnesses in the present case. There were counter-allegations between the parties; therefore, the evidence required careful assessment at the stage of investigation. Accordingly, upon considering the evidence collected during the investigation, he deleted the names of Accused Nos. 2 and 3.

06. It appears that the say of the Investigating Officer was filed through the learned A.P.P.

07. On perusal of the applications filed by the complainant and the A.P.P., it appears that they seek to array Kashinath Gharat and Nutan Gharat, the parents of Accused No. 1, as Accused Nos. 2 and 3 in this case. The complainant has also contended that his say was not sought on the application filed by the Investigating Officer under Section 169 of the Code of Criminal Procedure.

08. I have perused Exhibit 24, i.e., the application filed

by the Investigating Officer under Section 169 of the Code of Criminal Procedure. It appears that on 16/08/2010, the say of the informant was called by the predecessor, and the Investigating Officer was also directed to file his affidavit. I have also perused the order of my predecessor dated 24/12/2010. It appears that there is a specific mention that the say of the informant was called, and after considering the report of the Investigating Officer and the affidavit, the accused was discharged.

09. The order of my predecessor is dated 24/12/2010, which was passed exactly 15 years ago. The said order has never been challenged by the complainant till date. After a lapse of 15 years, the complainant has filed the present application, contending that his say was never called for. It is, however, evident that the informant was given an opportunity to file his say. Therefore, at this stage, the application filed by the complainant, raising a grievance against the said order, is not maintainable.

10. The A.P.P. has contended that, on the basis of the evidence of the witnesses before the Court, Accused Nos. 2 and 3 be summoned.

11. I have perused the evidence of the complainant, Sunil Pednekar. It appears that he deposed only that Mayur's parents had abused him. I have also perused the evidence of Pravin Pednekar (PW-2), who deposed that his parents abused them. The evidence of Sayali (PW-3) shows that she was not

present at the time of the incident. I have further perused the evidence of Ganesh Patil, who deposed that his parents had abused them. Therefore, it appears that three witnesses deposed that they were abused by the parents; however, the exact words used were not recorded. The ingredients of Section 504 of the Indian Penal Code, which require provocation or intentional insult, have not been deposed to by the witnesses. Similarly, the ingredients of Section 506 of the Indian Penal Code, relating to criminal intimidation, are also not supported by any of the witness testimony. It is further noted that counter-cases are pending between the parties. In particular, a counter-case against the present complainant and the witnesses has been filed by the present accused, Mayur Gharat, alleging that he was assaulted by the complainant and the witnesses. From the case records, it appears that the counter-case is pending against the complainant, which has been filed by the father of the present accused Mayur, i.e., Kashinath Gharat. Considering the evidence which is tested by the cross-examination, it appears that there is no sufficient evidence to summon the proposed accused Kashinath and Nutan under section 319 of Code of Criminal Procedure.

12. The application filed under section 319 of the Code hence I would like to reproduce the said section thus, -

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

13. In **Hardeep Singh Vs. Sate of Punjab and Ors. (2014) 3 SCC 92**, the constitution bench of the Apex Court held in Paragraph 105 thus,

Power under section 319 Cr.P.C is a discretionary and 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 laid before the court that such power should be exercised and not in a casual and cavalier manner.

14. From the said provision of the Code as well as the ratio laid down by the Hon'ble Apex Court in the above mentioned judgment, before summoning a person under this section a Court has to satisfy himself whether the proposed

accused is necessary to join the trial and that satisfaction can be gathered from strong and cogent evidence led before the Court and not otherwise.

15. In our case, charge has been framed against accused No. 01 but considering the evidence on record, it appears that there is no strong and cogent evidence against the proposed accused and therefore, they cannot be summoned under this section.

16. Considering the evidence on record, it appears that it is the allegation of prosecution that the accused No. 1 had made phone calls to the witness Sayali and thereby outraged her modesty. Therefore, the plea of the accused was recorded under section 509 of the I.P.C. Perusal of the evidence which is tested by the cross-examination it appears that at this stage there is no sufficient evidence to alter the charge against accused No. 1.

17. Considering the evidence on record, I pass the following order.

:: ORDER ::

Both the applications are rejected.

Alibag.

Date : **24/12/2025**.

(**M. B. Attar**)

Chief Judicial Magistrate,
Raigad Alibag