
(2006) 08 AHC CK 0201
In the Allahabad High Court
Case No : Criminal Revision No. 500 of 2006

Ajay Singh @ Kullu, Lallan Yadav and Ramanad APPELLANT
Vs
State of U.P. RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300, 319, 321
Penal Code, 1860 (IPC) — Section 308, 323, 324, 34, 504

Citation : (2006) 7 ADJ 744

Hon'ble Judges : Shiv Shanker, J

Bench : Single Bench

Advocate : Indra Lal Yadav and Prem Prakash, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Shiv Shanker, J.—This revision has been preferred against the impugned judgment and order dated 03-04-2006 passed in Session Trial No. 343 of 2005 (State of U.P. v. Ramanand and Ors.), under Sections 323, 324, 308 read with Section 34 and 504, I.P.C. by Additional Sessions Judge (Fast Track Court No. 24) whereby the application moved by the prosecution u/s 319 of Criminal Procedure Code against the revisionists was allowed.

2. Brief facts, giving rise to this revision, are that in Session Trial No. 343 of 2005 the accused persons Ramanand and others are facing trial before the Sessions Judge for the charges under Sections 323, 324, 308/34 and 504 I.P.C..

3. After framing the charge, the statement of PW-1 Balikaran was recorded. Thereafter, the prosecution has moved an application u/s 319 Cr.P.C. to summon the accused Kallu @ Ajay, against whom the charge-sheet was not filed and case was not committed, which was allowed. Feeling aggrieved by it, this revision has been filed.

4. Heard the arguments of learned Senior counsel appearing for the revisionists

and learned A.G.A.

5. It is contended on behalf of the revisionists that application u/s 319 Cr.P.C. was not moved by the complainant of this case and District Government Counsel (Criminal) has not obtained any instructions or direction on behalf of the State to move such application and this is not the duty of the State counsel according to the Legal Remembrancer Manual 7.20. Therefore, he was not empowered to move the application u/s 319 Cr.P.C. However, it was allowed by committing the error of law by the concerned trial court.

6. This contention has no force. There is the latest pronouncement in the case of S.K. Shukla v. State of UP AIR 2006 S.C. 415, wherein it has been observed that for the withdrawal of the prosecution u/s 321 Cr.P.C., Public Prosecutor cannot act on dictates of State Government. He has to act objectively being officer of Court. Courts are also free to assess whether prima facie case is made out or not. This latest pronouncement is fully applicable in the case in hand and the contention of the learned Counsel for the revisionists has no force.

7. It is further contended that though the revisionist No. 1 is named in the FIR but the charge-sheet was not filed against him. A Final report filed against him was accepted by the Court.

8. In these circumstances, they cannot be summoned by the Court on the basis of principle of estoppel. Therefore, the impugned order is liable to be quashed.

9. This contention has also no force. While exercising the power u/s 319 of Criminal Procedure Code it has to be seen or considered whether the prima facie case is made out on the basis of the evidence recorded by the Trial Court after framing the charge against the accused. At this stage, principle of estoppel will not be applicable according to Section 300 Cr.P.C.

10. It is further contended that the copy of the application was not given to the counsel of the accused at the time of considering the application u/s 319 Cr.P.C. by the trial court. This argument has also no force as the application was not moved against the accused, who were facing the trial. Therefore, there was no locus standi to file the objection against the application. It is further contended that there was no case against the revisionists and accused could only be summoned u/s 319 Cr.P.C. if the evidence is available which is sufficient for conviction. In the present case, there was no sufficient evidence on the basis of which conviction could be made.

11. On the other hand, it is submitted by learned A.G.A. that learned court below has not committed any error of law or incorrectness in passing the impugned order.

12. Allegations made in the First Information Report briefly are that on 27-03-2002 at about 10:00 pm that Kallu @ Ajay accused on the exhortation of the co-accused Ramanand assaulted and inflicted a sharp edged weapon injury on the head of the injured Balikaran S/o Ram Lal and one accused Lallan was

also named in the FIR. Injured sustained five injuries including a blunt object and a sharp edged weapon injury. Charge-sheet was filed against two accused Ramanand Yadav and Lallan but charge-sheet was not filed against the revisionist who was named in the FIR.

13. Statement of PW-1 Balikaran was recorded by the trial court, wherein he has specifically stated that Kallu @ Ajay, who is the revisionist caused the sharp edged weapon injury by kulahari i.e. axe. Therefore, he is named in the version of FIR which is prima facie corroborated by the statement of PW-1 Balikaran regarding the role of the present revisionist and it is also supported by the medical report as he also sustained the sharp edged weapon injury. Therefore, learned court below has rightly deemed the prima facie case against the accused-revisionist for summoning him u/s 319 Cr.P.C. and, if this evidence is not rebutted on behalf of the accused, he may be convicted.

14. In these circumstances, I do not find any force in the arguments advanced on behalf of the revisionists.

15. So far as the pronouncement of Hon'ble Apex Court in Michael Machado and Another Vs. Central Bureau of Investigation and Another, is concerned, 54 witnesses had been examined including their cross-examination. Therefore, it was held that the de novo trial is not proper. In the present case, statement of PW-1 is only recorded.

16. The pronouncement in Mahesh Chandra Misra and Others Vs. State of U.P. and Others, is also not applicable in the present case as there is direct evidence against the revisionists and main role has been assigned to him in the alleged occurrence.

17. Similar view has also been taken in Ganga Prasad Mishra v. State of UP and Anr. (51) 2005 ACC 406.

18. In view of discussions made above, I come to the conclusion that the learned court below has not committed any error of law, illegality or incorrectness in allowing the application u/s 319, Cr.P.C. against the revisionist and it is not liable to be interfered with.

19. Thus, this revision has no force and is liable to be dismissed. The impugned order passed by the court below is hereby affirmed.