
(2007) 08 AHC CK 0068
In the Allahabad High Court

Anoop Singh

APPELLANT

Vs

State of U.P. and Shri Saroj Kumar Singh

RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

Citation : (2007) 08 AHC CK 0068

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amar Saran, J.—This application was filed for quashing of an order dated 1.6.2007 passed by the Additional District Judge, Banda, Court No 1 summoning the applicant in S.T. No. 66 of 2004 State v. Ajay Singh in a case under Sections, 147, 148, 149, 302 IPC, PS Girwan district Banda, in a proceeding u/s 319 Cr. P.C.

2. I had reserved the judgment on 6.7 2007 as learned Counsel for the applicant stated that he wanted to furnish written arguments. However, the written arguments were not furnished. Hence I proceed to pass the order.

3. The ground taken for challenging the order u/s 319 Cr. P.C. summoning the applicant as aforesaid was that the order had been passed only on the basis of the examination-in-chief of a witness P W. 1 Saroj Kumar Singh without even waiting for his cross examination. In Rakesh and Another Vs. State of Haryana, it was held that once the Sessions court records the statement of a witness, that could be prima facie material, which would enable the Sessions court to decide whether to exercise powers u/s 319(1) Cr. P.C. or not. The accused would have an opportunity to cross examine and question the veracity and truthfulness of the witness at the appropriate stage in the trial, but that should provide no reason for restraining an order summoning an accused on the basis of the examination-in-chief. The same view was taken in Ranjit Singh Vs. State of

Punjab,

4. Secondly it was (sic) argued that there was no prima facie evidence of the applicant's involvement in the offence and that the said summoning order u/s 319 Cr. P.C. was against the decision of the Supreme Court in the case of Palanisamy Gounder and Anr. v. State represented by Inspector of Police reported in (2005) 12 SCC, 327 and Mohd. Shafi Vs. Mohd. Rafiq and Another, and the Court ought to have recorded the finding that there was no prospect of the applicant's conviction, and refuse to have summoned the applicant in exercise of powers u/s 319 Cr PC I find no merit in this contention liaised by the learned Counsel for the applicant This question is no more res integra that there was no fetter on the court in summoning a person as an accused only on the basis of (sic) examination-in-chief and it was not imperatives that the witness must be cross-examined before an accused is summoned.

5. Even on facts, allegations in the FIR were that in the incident dated 30.8.2001 the deceased Randhir Singh was fired upon when he was going in front of the door of the house of Jiledar Singh In that case the applicant was described as the main accused, who resorted to firing on the deceased Randhir Singh. For some reasons in this case, though there is direct evidence, the police had not submitted a chargesheet against the applicant, but only charge-sheeted the other five accused, who were named in the F.I.R. After the examination-in-chief of the informant Saroj Kumar Singh, who corroborated his version in the F.I.R., and attested to his presence along with other witnesses Chhatra Pal Singh and Babboo Singh at the spot, the trial judge passed the impugned order dated 1.6.2007 summoning the applicant. This is not a case where it could be said prima facie that there was no reasonable prospect of the case against the applicant ending in conviction. The order summoning the applicant had also not been passed by way of a fishing enquiry. The eyewitness, who is also the informant, had given direct evidence in court about the involvement of the applicant, who was shown to be main accused even in the FIR hence the case of palanisamy Gounder and Anr. (supra) is not at all applicable. Likewise the case of Mohd. Shafi v. Mohd. Rafiq and Anr. (supra) is also not applicable. Facts in the said cases were completely different.

6. Hence as the learned judge has committed no illegality in the order summoning the applicant u/s 319 Cr. P.C., the third argument of the learned Counsel for the applicant that the learned Judge has passed the order in a mala fide manner as an election petition, which he was hearing against the applicant had been transferred to the Court of District Judge by an order of the High Court dated 22.5.07 hence the Court was prejudiced against the applicant is completely misconceived and devoid of any substance There is, therefore, no force in this application. It is dismissed.

7. The Trial Court is directed to proceed expeditiously with the trial.