
(2004) 12 AHC CK 0017
In the Allahabad High Court
Case No : Criminal Revision No. 1121 of 2002

Ashok Kumar Sharma

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 06-12-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319

Citation : (2005) 1 ACR 956

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Advocate : Sunil Kumar and Anand Kumar Tiwari, for the Appellant; A.G.A., for the Respondent

Judgement

Umeshwar Pandey, J.—Heard the learned Counsel for the revisionist and the learned A.G.A.

2. By the impugned order dated 26.7.2002, the court below has summoned the applicant-revisionist as an accused in Sessions Trial No. 352 of 2002 on the basis of the statement of P.W. 5-Lakhan and P.W. 6-Veer Pal.

3. It is contended by the learned Counsel for the revisionist that these witnesses are not named in the F.I.R. The witnesses, who are named, were Ilyas and Hamid. They have been examined before the Court and have been declared hostile. The evidence recorded u/s 161, Cr. P.C. against the present applicant-revisionist was not found sufficient to submit the charge-sheet against him and, as such, he was not challaned by the Police. The worth of the evidence given by Veer Pal and Lakhan is quite minimal. There is hardly any possibility of the case to end into the conviction on the basis of the evidence given by the witnesses as against the applicant. These witnesses have also given out that the applicant-revisionist-Ashok Kumar Sharma, while the incident was taking place, was standing at a distance without taking any active role in the assault against the deceased.

4. I have seen the evidence of the aforesaid two witnesses-P.W. 5 and P.W. 6 and have considered the material available on the record. As submitted by the learned Counsel, there is hardly any scope for the present applicant being punished who was simply named by the aforesaid two witnesses without assigning to him any role in the said incident.

5. A Court, though, is empowered to summon a person to face the trial while he has not been challaned by the police, yet the empowerment u/s 319, Cr. P.C, is just a discretion, which has to be exercised only to achieve criminal justice. It is not expected of the Court, to turn against another person whenever it comes across evidence connecting that other person also with the offence. A judicial exercise of discretion is meant for the purposes of facilitating dispensation of actual justice and the exercise of such discretion, as given u/s 319, Cr. P.C., has been interpreted not to be a compelling duty on the Court to proceed against a person, who has not been charge-sheeted by the police. In the case of Michael Machado and Anr. v. Central Bureau of Investigation and Anr. 2000 (1) ACR 747 (SC) : 2000 SCC 609, para 12 of the judgment is quite relevant for its reproduction here:

But even then, what is conferred on the Court is only a discretion as could be discerned from the words "the Court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that other person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the Court to proceed against other persons.

6. In the case of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, , the Apex Court has further held as below:

But, we would hasten to add that this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.

7. The discretion, as given to the Court when does not cast compelling duty upon it to proceed against a person in the trial, has definitely to be exercised sparingly as it is an extraordinary power of the Court. The learned court below, while passing the impugned order on the basis of the evidence, as detailed above, does not appear to have exercised its discretion in accordance with the aforesaid principles laid down by the Apex Court, as the statements of the witnesses relied upon, does not speak of direct participation of the applicant-revisionist in the alleged offence of commission of assault upon the deceased.

8. In the aforesaid view of the matter, the impugned order cannot sustain and

has to be set aside in this revision. The revision is allowed and the impugned order dated 26.7.2002, is hereby set aside.

9. The court below is directed to proceed with the trial as against the other accused persons in accordance with law.