
(2004) 09 AHC CK 0240
In the Allahabad High Court
Case No : Criminal Revision No. 3995 of 2004

Babu Ahmad

APPELLANT

Vs

State of U.P. and Muneer Ahmad alias Munna

RESPONDENT

Date of Decision : 16-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 319(1), 398

Citation : (2004) 09 AHC CK 0240

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : L.M. Singh, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Poonam Srivastava, J.—Heard learned Counsel for the revisionist and learned A.G.A.

2. Present revision has been filed against the order dated 20.8.2004 passed by Additional District and Sessions Judge/ F.T.C. 1st Kanpur Dehat, in Session Trial No. 507 of 2003 State v. Chand Babu and Ors. summoning the revisionist u/s 319 Cr.P.C. Reliance has been placed by learned Counsel for the revisionist on a decision of the Apex Court in the case of Sohan Lal and others Vs. State of Rajasthan, . The Apex Court has ruled that the provisions of Section 319 Cr.P.C. have to be read with the proviso of Section 398 Cr.P.C. Once a person, who was an accused in the case would be out of reach of Section 319 Cr.P.C. if he has been discharged. In the present case, the revisionist was named as an accused in the First Information Report but no charge sheet was filed against him and the police submitted final report, which is annexure No. 2 to the affidavit filed in support of the criminal revision. The argument on the basis of decision of the Apex Court in the case of Sohan Lal (supra) is non submission of the charge sheet amounts to discharge of the accused and in view of Section 398 Cr.P.C., he could not be summoned by the Court during trial It is apparent the decision of the Apex Court has been misinterpreted by Counsel for the revisionist, what has

been ruled in the said decision is that once the Court has discharged an accused in exercise of proviso to Section 398 Cr.P.C. he cannot be summoned u/s 319 Cr.P.C. meaning thereby that in a case where the accused has been charge sheeted and committed for trial to the Court of Session and at the beginning of the trial an accused is discharged then the Court cannot recall him, the trial begins by framing of charge. The Court has once made an opinion and come to the conclusion on the basis of documents available before trial Court that there is no evidence to proceed against the accused and passes an order of discharge, then at a subsequent stage in the same trial such an accused cannot be summoned u/s 319 Cr.P.C. Admittedly, this is not the fact of the present revision. The opinion of police cannot prevail over the opinion and discretion of the Court during trial. In fact, decision of the Apex Court cited by Counsel for the revisionist is not applicable to the facts of the present case.

3. Learned A.G.A. placed reliance on a decision reported U.P. Criminal Rulings Mohd. Khalid and Anr. v. State of U.P. and Anr. 2003 (1) 146, this Court ruled that the person named in the F.I.R. but not charge sheeted can be summoned by invoking jurisdiction u/s 319 Cr.P.C. Perusal of the decision shows that this Court while passing the judgment had placed reliance on the case of Joginder Singh v. State of Punjab (XVI) 1979 ACC 1979 and Girish Yadav and Others Vs. State of Madhya Pradesh, . The Apex Court has clearly held that provision of Section 319(1) Cr.P.C. provides that even persons who have been dropped by the police during the investigation, but against whom evidence showing their involvement in the offence comes to notice of the criminal Court, the court is well within its right to summon any person as an accused. The words "Any person not being the accused" in Section 319 Cr.P.C would cover any person who is not before the Court already at the time of trial. It is clear that in the event the Court discharges an accused during the course of proceedings then he cannot be summoned subsequently, at the stage of Section 319 Cr.P.C. In the instant case, since no charge sheet was filed against him. the revisionist was not before the Court as an accused and the Court was well within its jurisdiction to summon him if it comes to a conclusion during the course of evidence that he was also involved in the offence. The impugned order does not suffer from any illegality. However, since the revisionist had no occasion to claim discharge before the Court at the initiation of the trial and claim discharge, the Counsel for the revisionist prays for an opportunity to do so. In the circumstances, prayer of the revisionist for an opportunity to claim his discharge is well founded and is allowed.

4. Present revision is disposed of with the direction to the Sessions Judge to give an opportunity of hearing to the revisionist, if he is so advised and only after passing an order in accordance with law on the application/objection moved on behalf of the revisionist, the Court should proceed against him. Learned Counsel for the revisionist prays that he may be permitted to appear through his Counsel for the limited purpose and till arguments are heard on the application if so moved for claiming discharge.

5. With the above direction, present revision is finally disposed of.