
(2006) 08 AHC CK 0302
In the Allahabad High Court

Balveer and Radhey Shyam

APPELLANT

Vs

State of U.P. and Dinesh

RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 156, 157, 158
Penal Code, 1860 (IPC) — Section 147, 304, 323, 324, 325

Citation : (2006) 08 AHC CK 0302

Hon'ble Judges : V.K. Chaturvedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Chaturvedi, J.—This revision is preferred against the judgment and order dated 24.7.2006 passed by Additional District and Sessions Judge (FTC) I, court No. 10, Mathura in ST. No. 215 of 2006 whereby the trial court on the application of the prosecution u/s 319, Cr.P.C, summoned the revisionists to face trial along with other accused persons.

2. Heard Sri H.N. Singh, counsel for the revisionists, Sri Lalit Kumar Shukla, counsel for the opposite party No. 2 and A.G.A.

3. It is contended by the counsel for the revisionists that the revisionists were nominated as accused at crime No. 392 of 2005 u/s 323, 324, 504, 506, 304 IPC, P.S. Highway District Mathura and they were exonerated by the investigating agency during the investigation, as such, they cannot be summoned while exercising the power u/s 319, Cr.P.C. because they were nominated as an accused in the F.I.R. It is next contended that Section 167(2), Cr.P.C. provides the word "accused" though the accused word has not been defined in the Cr.P.C. It is also contended that the court can take cognizance u/s 190 and 193 Cr.P.C., the sessions court has no power to summon any accused person who has not been committed to the court of sessions. Counsel for the revisionists has also relied upon a judgment of Sohan Lal and others Vs. State of Rajasthan,

4. Counsel for the complainant and A.G.A. contended that these revisionists were nominated as accused but with the connivance of police they were not charge-sheeted nor final report was submitted and were exonerated by the Investigating Officer because both the revisionists are the constables of Railway Protection Force. It is also contended that the revisionists, who were named as accused and when the case of the other accused persons were committed to court of session, Dinesh was examined, during the trial, as P.W.1 and he named these revisionists in his statement. Thereafter, an application u/s 319, Cr.P.C. was moved by the Public Prosecutor to summon these persons and trial court, vide his order dated 24.7.2006 by a detailed and reasoned order, summoned the revisionists to face trial along with other accused persons.

5. Regarding the first contention raised by the counsel for the revisionists that once the person is named in the F.I.R. as accused, he cannot be summoned because they were not remanded during investigation, they cannot be summoned u/s 319, Cr.P.C. It is relevant to refer Section 167, Cr.P.C.:

Procedure when investigation cannot be completed In twenty four hours.

167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

6. By naming any person in the F.I.R. will not be called as an accused unless there are grounds for believing that acquisition or information is well founded and the person was arrested and detained in custody only then copy of the entries in diary relating to case along with accused forwarded to the Magistrate within twenty-four hours as prescribed u/s 57, Cr.P.C. Till the information or acquisition is not founded he cannot be called as an accused. The Sub-clause (2) of Section 167, Cr.P.C. provides that when the acquisition or information is well founded by the Investigating Officer after receiving cognizable offence report, the person is arrested or detained in custody, he will be forwarded under this Section to the Magistrate to authorize the detention of the accused in such custody. In Section 167(1), Cr.P.C. in the first line the "accused" word is not given. In Section 167(2), Cr.P.C. the word given "whenever any person is arrested or detained in custody and it appears that investigation cannot be completed within twenty-four hours as fixed by Section 167, Cr.P.C. and there are ground for believing that acquisition or information is well founded, the officer in-charge of the police station or Investigating Officer shall forthwith transmit to nearest Magistrate only then he comes the definition of accused. Thus the expression accused person would obviously mean those accused persons against whom police had filed charge-sheet after completing investigation u/s 173(2), as such,

first contention raised by the counsel for the revisionists has no force.

7. The second argument advanced by the counsel for the revisionists about Section 169, Cr.P.C. Section 169, Cr.P.C. comes after Section 167, Cr.P.C; when the acquisition or information is well founded on the F.I.R. against any person and the person is taken into custody then he was forwarded to the Magistrate for judicial remand. Section 168, Cr.P.C. provides that "when any subordinate police officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in-charge of the police station. Then Section 169, Cr.P.C. comes which provides that "If, upon an investigation under this Chapter, it appears to the officer in-charge of the police station that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is, in custody, release him on his executing a bond with or without sureties, as such, officer, may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial. The intention of the legislation is very clear while enacting Cr.P.C. specific provision has been given in Chapter XII of Cr.P.C. and every stages after the lodging F.I.R. has been specially given in the Section which starts from Section 154 to 176, Cr.P.C. then comes Chapter XIII of Cr.P.C. about the jurisdiction of criminal courts. So the contention raised by the counsel for the revisionist that the person against whom final report is submitted cannot be summoned while exercising the powers u/s 319, Cr.P.C. is also no force.

8. The third arguments advanced by the counsel for the revisionists is that the person made as accused in the F.I.R. cannot be summoned u/s 319, Cr.P.C. Section 319, Cr.P.C. provides:

319. (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.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

9. In the case relied by the counsel for the revisionists *Sohan Lal and Ors. v. State of Rajasthan* (Supra) it has been held that the provisions of Section 319, Cr.P.C. have to be read in consonance with the provisions of Section 398 Cr.P.C. Once a person is found to have been the accused in the case he goes out of the reach of Section 319. Whether he can be dealt with under any other provisions of the Code is a different question. In the case of the accused who has been

discharged under the relevant provisions of the Code, the nature of finality to such order and the resultant protection of the persons discharged subject to revision u/s 398 Cr.P.C. may not be lost sight of. Once a person was an accused in the case he would be out of reach of Section 319 Cr.P.C. In that case after completing the investigation police submitted charge sheet against the appellant u/s 147, 323, 325, 336, 427 I PC and charge sheet was forwarded to the Judicial Magistrate u/s 173(2), Cr.P.C. After taking the cognizance and after hearing the arguments, the Judicial Magistrate, vide his order dated 3.10.1980 in criminal case No. 165 of 1980 has been pleased to discharge the appellant No. 4 and 5, namely, Bijya Bhai and Jiya Bhai of all the charges levelled against them and the appellants No. 1, 2 and 3, namely, Sohan Lal, Padam Chand and Vishnu were ordered to be charged only u/s 427 IPC on the basis of police papers. Thereafter Assistant Public Prosecutor moved an application to the Magistrate u/s 216, Cr.P.C. with a prayer that charge be amended as from the medical evidence and other material on record, an offence u/s 427, 325, 336 IPC is also made out. Then it was held that once a person was discharged by the court in accordance with the relevant provision of Code, he cannot be summoned u/s 319, Cr.P.C. subject to the revision u/s 398 Cr.P.C.

10. Hence facts of the case are not applicable in the present case because no charge sheet was submitted against the revisionists and they were not discharged under the relevant provision of Cr.P.C., i.e., 227, 239, 245, 249 after taking the cognizance and when the statement of P.W.1 11. Dinesh was recorded during trial then again complicity of these revisionists came in the statement and thereafter an application was moved on behalf of prosecution u/s 319, Cr.P.C. that these revisionists were also named in the F.I.R. and in the statement of witnesses u/s 161, Cr.P.C. and now their complicity have come in the statement of P.W.1 Dinesh examined during trial, as such, they may be summoned u/s 319, Cr.P.C. and the Additional Sessions Judge, FTC No. 10, after perusing the statement and other material on record and law cited by the counsel for the parties, summoned the revisionists u/s 319, Cr.P.C. to face trial u/s 323, 324, 504, 506, 304 I PC, as such, there distinction between the person not charge-sheeted and the accused discharged.

11. The Apex Court in the case of 2002 (1) ACR 419 (SC) held that person named as an accused in the F.I.R. but not charge-sheeted can be summoned u/s 319, Cr.P.C. because in that case also F.I.R. was lodged against few persons but Investigating Officer submitted charge-sheet only against one accused and excluded the name of other person. During trial application was moved u/s 319, Cr.P.C. before the trial court on the ground that the name of four accused persons find place in the F.I.R. and two prosecution witness's statement were recorded incorporating the role of those accused persons in the said incident. That application was allowed and the order was set aside by this Court. The complainant approached before the Apex Court where it has been held in paragraph No. 5:

In our view, the impugned order is, on the face of it, illegal and erroneous. It is against the provisions of Section 319, Cr.P.C. and the decisions rendered by this Court interpreting the same. In *Kishun Singh and Others Vs. State of Bihar*, this Court considered a case where a FIR was lodged naming 20 persons including the two appellants as assailants of the deceased who died in the occurrence. After investigation, police submitted its report u/s 173, Cr.P.C. showing 18 persons other than the two appellants as offenders. The Magistrate committed those 18 persons named in the report to the Court of Session u/s 209 Cr.P.C. to stand trial. Before Sessions Court, an application u/s 319 of the Code was filed praying that remaining two accused be summoned and arraigned as accused. The Sessions Court impleaded them as co-accused. That order was finally challenged before this Court and the Court dismissed the appeal by holding that Section 319 can be invoked both by the Court having original jurisdiction as well as the Court to which the case has been committed or transferred for trial. Similar is the view taken in *Girish Yadav and Others Vs. State of Madhya Pradesh*,

12. In the other case of *Tek Narayan Prasad Yadav v. State of Bihar and Anr.* reported in 1999 SCC 356, the Apex Court held that Sessions Court is competent to issue process against a person who is not charge-sheeted u/s 193 after having begun the trial and having recorded some evidence of the prosecution. In paragraph Nos. 4 and 5 it has been held:

(4) When the matter was placed before a two-Member Bench of this Court, conflict in judicial opinion was pointed out to the effect whether the Court of Session can summon an accused who is not charge-sheeted u/s 193 of the Code of Criminal Procedure. The above question was understood to have been answered in the affirmative in *Kishun Singh v. State of Bihar* and *Nisar v. State of U.P.* Whereas there was discordant not in *Raj Kishore Prasad v. State of Bihar*.

(5) On the instant fact situation, it is plain that the Court of Session issued process against the appellant after having begun the trial and having recorded some evidence of the prosecution. Such step of the Court of Session cannot even remotely be termed as transgressing the affirmative views expressed in the above noted two cases. The third case (*Raj Kishore Prasad*) had a different fact situation, being of the pre-committal stage on the basis of which it was held that Section 319 Cr.P.C. was inapplicable. Therefore, in this view of the matter, the supposed conflict of judicial opinion need not be resolved in this case.

13. In the case of *Kishori Singh and Ors. v. State of Bihar and Anr.* reported in (2004) 13 SCC 11, the Apex Court held in paragraph No. 10

So far as those persons against whom charge-sheet has not been filed, they can be arrayed as "accused persons" in exercise of powers u/s 319, Cr.P.C. when some evidence or materials are brought on record in course of trial or they could also be arrayed as "accused persons" only when a reference is made either by the Magistrate while passing an order of commitment or by the learned Sessions Judge to the High Court and the High Court, on examining the materials, comes

to the conclusion that sufficient materials exist against them even though the police might not have filed charge-sheet, as has been explained in the latter three-Judge Bench decision. Neither of the contingencies has been arisen in the case in hand.

14. The Apex Court in the case of Geeta Ram v. Vedi Ram and Ors. reported in 2004 SCC 1136 has held that the person can be summoned u/s 319, Cr.P.C. though they were named in the F.I.R. but no charge-sheet was filed against them.

15. In the present case revisionists were named in the F.I.R. and they were also named by the witnesses u/s 161, Cr.P.C. but no charge sheet was filed against them and during trial the statement of P.W.1 Dinesh was recorded in which complicity of the revisionists again came and the trial court on the application of Public Prosecutor, summoned the revisionists u/s 319, Cr.P.C. to face trial along with other accused persons.

16. In view of the above discussions, there is no force in the contention raised by the counsel for the revisionists and there is no illegality or irregularity committed by the trial court while summoning the revisionists u/s 319, Cr.P.C.

17. The revision has no force and is, accordingly, dismissed.

18. However, considering the facts and circumstances of the case, it is provided that in case the revisionists appear/surrender before the court concerned in the aforesaid case within a period of three weeks from the date of receipt of certified copy of this order and apply for bail, then their prayer for bail application shall be dealt with as per the "Seven fudges" decision of this Court in the case of Smt. Amarawati and Anr. v. State of U.P. reported in 2004(57) ALR 390.