
(2016) 02 RAJ CK 0049
In the Rajasthan High Court
Case No : Cr. Misc. Petition No. 307/2016

Bhagirath Ram and Others	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, Section 482
Penal Code, 1860 (IPC) — Section 143, Section 147, Section 148, Section 149, Section 323, Section 34, Section 447

Citation : (2016) 02 RAJ CK 0049

Hon'ble Judges : Vijay Bishnoi, J.

Bench : Single Bench

Advocate : R.S. Choudhary, for the Appellant; Vikram Rajpurohit, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Vijay Bishnoi, J.—1. This criminal misc. petition under section 482 Cr.P.C. has been filed by the petitioners being aggrieved with the order dated 20.01.2016 passed by Sessions Judge, Merta District Nagaur (for short "the appellate court" hereinafter) in Cr. Appeal No. 67/203, whereby the appeal filed by the petitioners against the order dated 20.07.2013 passed by Nyayadhikari, Gram Nyayalaya, Jayal, District Nagaur (for short "the trial court" hereinafter) in Cr. Original Case No. 73/2012, has been dismissed.

2. The trial court vide order dated 20.07.2013 has ordered for taking cognizance against the petitioners for the offences punishable under sections 147, 447, 323/149 IPC while allowing an application filed on behalf of the respondent No. 2 under section 319 Cr.P.C.

3. Brief facts, necessary for disposal of this petition, are that one Bala Ram filed a written report to the Station House Officer, Police Station, Roal, District Nagaur on 23.04.2012 at 8:40 P.M. alleging therein that today at about 2:00 P.M. when he was cultivating his field situated at village Somna, Tehsil Jayal, District Nagaur

and Likhma Ram son of Puna Ram and his wife Santosh were working in the adjacent field, suddenly Purkha Ram son of Narayan Ram, Manakram son of Narayan Ram, Ramniwas son of Narayan Ram, Jena Ram son of Narayan Ram all residents of Somna and Rajendra son of Bhagirath Ram, Bhagirath son of Anda Ram, residents of Bugarda, Rameshwari wife of Ramniwas, Parma Devi wife of Purkha Ram, Munni wife of Andaram, residents of Somna armed with lathis and katari entered into the field of Likhma Ram and attacked Likhma Ram and his wife with the intention to kill them. The complainant further stated that he and Bhanwar Lal tried to rescue them but all the accused-persons caught hold of him and then Bhanwar Lal fled away towards the village, then all the accused-persons ran away from the scene of crime. It is also alleged in the complaint that Bhanrwar Lal received injuries and accused-persons have attacked Likhma Ram because of the previous enmity. It is also alleged in the complaint that the agricultural field of his father was sold through a registered sale deed in the name of Rameshwari wife of Ramniwas and to cancel the said registered sale deed, he filed a suit in the Court of Additional District Judge, Nagaur, in which Likhma Ram is helping him and one another suit has also been filed in the Court of Assistant Collector, Jayal, in which also, Likhma Ram is helping him and, therefore, all the accused-persons had assaulted Likhma with the intention to kill him. It is further stated in the complaint that as the condition of Likhma Ram is serious, he is admitted in Nagaur Hospital and in both the cases, temporary injunction in his favour is passed by the court.

4. After receiving the aforesaid report, the police registered FIR No. 32/2012 dated 23.04.2012 at Police Station, Roal, District Nagaur for the offences punishable under sections 143, 148, 149, 447, 323 IPC against nine persons named in the written complaint. After investigation, the police has filed charge-sheet against four persons viz. Manak Ram, Jena Ram, Purkha Ram and Rameshwari under sections 447 and 323/34 IPC, however, the petitioners have not been charge-sheeted. The trial court has also taken cognizance against the above named four persons for the said offences.

5. During the course of trial, statements of 12 prosecution witnesses had been recorded up to 05.01.2003 and at that stage, the counsel for the respondent No. 2 moved an application under section 319 Cr.P.C. with a prayer for summoning the petitioners as accused in the criminal case No. 73/2012. It was contended on behalf of the respondent No. 2 that in the court statements, PW. 1 Bala Ram, PW. 4 Santosh, PW. 9 Likhma Ram and PW. 10 Mahendra, have clearly stated that 9 persons viz. Jena Ram, Manakram, Ramniwas, Purkha Ram, Bhagirath, Rajendra, Munni, Parma Ram and Rameshwari had assaulted Likhmaram and, therefore, Bhagirath, Rajendra, Munni, Parma Ram and Ramniwas should also be arraigned as accused in the trial. The said application was allowed by the trial court vide order dated 20.07.2013 and the petitioners were also arraigned as accused along with the other persons and the trial court took cognizance against the petitioners for the offences punishable under sections 147, 447, 323/149 IPC and summoned them throughailable warrants.

6. Being aggrieved with order (dated 20.07.2013, the petitioners have moved an appeal before the appellate court, however, the same has been dismissed vide impugned order dated 20.01.2016. Hence, this criminal misc. petition.

7. Learned counsel for the petitioners has argued that the trial court has grossly erred in taking cognizance against the petitioners for the offences punishable under sections 147, 447, 323/149 IPC while invoking the provisions of section 319 Cr.P.C. though even from reading of the statements of the prosecution witnesses; examined during the course of trial, it cannot be said that the said evidence will result in conviction of the newly added accused for the offences for which the cognizance has been taken. It is further argued that power under section 319 Cr.P.C. is a discretionary and extraordinary and it can only be exercised in those cases where the evidence is of such nature that the same will result in conviction of the newly added accused-persons. It is also argued that nature of evidence required for taking cognizance against the newly added accused-persons should be more than prima facie case as exercised at the time of framing of charge, however, in the present case, even after going through the statements of the prosecution witnesses, it cannot be said that the evidence against the petitioners is more than prima facie case as exercised at the time of framing of charge and, therefore, the order passed by the trial court is erroneous and is liable to be quashed. It is further argued that the appellate court has not taken into consideration the settled proposition of law laid down by the Hon''ble Supreme Court as well as by this Court and dismissed the appeal in a mechanical manner.

8. In support of above contentions, learned counsel for the petitioners has placed reliance on decisions of Hon''ble Supreme Court rendered in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi & Ors., , (1983) 1 Supreme Court Cases 1, Michael Machado & Anr. Vs. Central Bureau of Investigation & Anr., , (2003) 3 Supreme Court Cases 262, Lal Suraj @ Suraj Singh & Anr. Vs. State of Jharkhand, , 2009 Cr.L.R. (SC) 1, Brindaban Das & Ors. Vs. State of West Bengal, , 2009 Cr.L.R. (SC) 124 and Babubhai Bhimabhai Bokhiria Vs. State of Gujarat & Ors., , (2014) 5 Supreme Court Cases 568. The learned counsel for the petitioners has also placed reliance on decisions of this High Court rendered in Sunita Vs. State of Rajasthan & Ors., , 2011 (1) Cr.L.R. (Raj.) 649, Pawan Kumar Vs. State of Rajasthan & Ors., 2014 (3) Cr.L.R. (Raj.) 1177, Hatti Ram Vs. State of Rajasthan & Anr., 2015 (3) Cr.L.R. (Raj.) 1298 and Gokul Chand & Anr. Vs. State of Rajasthan & Ors., 2015 WCL (Raj.) UC 537.

9. Per contra, learned Public Prosecutor has opposed the criminal misc. petition and submitted that the courts below have not committed any illegality in passing the impugned orders and, therefore, no interference is called for. It is also submitted that it is true that while invoking the powers under section 319 Cr.P.C., the court has to see that a prima facie case is to be established against the accused-persons from the evidence led before the court and though the said prima facie case should be more than a prima facie case as exercised at the time

of framing of the charge but it is not required for the court to give a finding to the effect that on the basis of the said evidence, the accused-persons can be convicted. It is also argued that from the evidence led before the court, if the court is prima facie satisfied that the persons, who have not been arraigned as accused earlier, could be tried together with the persons already arraigned as accused, then the court is justified in proceeding against the said persons.

10. In support of the above contentions, learned Public Prosecutor has placed reliance on decision of Hon"ble Supreme Court in Hardeep Singh vs. State of Punjab and Ors., reported in , (2014) 3 SCC 92.

11. Heard learned counsel for the rival parties, perused the impugned orders, material available on record as well as the statements of the prosecution witnesses recorded before the trial court.

12. Section 319 Cr.P.C. reads as under:

"319. Power to proceed against other persons appearing to be guilty of offence.-

(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.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

13. From bare reading of section 319 Cr.P.C., it is clear that section 319 Cr.P.C. confers power on the trial court to find out whether a person, who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency. Before making an order summoning an accused, the trial court must form an opinion on the basis of the evidence brought before it that a case has been made out to the effect that the person, who has not been arraigned as accused by the investigating agency could be tried together with the other persons, who have been arraigned as accused.

14. Now the question comes whether the court invoking the powers under section 319 Cr.P.C. must satisfy itself that the evidence led before it leads to irresistible conclusion that the same will result in conviction of the newly added respondents or not. The Constitutional Bench of Hon"ble Supreme Court in Hardeep Singh is case (supra) answering a reference arose out of variety of views having been expressed by the Hon"ble Supreme Court and several High Courts of the country on the scope and extent of the powers of the courts under the criminal justice system to arraign any person as an accused during the course of trial as contemplated under section 319 Cr.P.C., has formulated the following question:

"Question (iv) What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?"

The above mentioned question was answered as under:

"106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused." The words used are not "for which such person could be convicted". There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

[Emphasis Supplied]

15. Thus, from the above authoritative pronouncement, it is clear that the trial court while invoking powers under section 319 Cr.P.C. is not required to form any opinion as to the guilt of the accused while considering the evidence led before it during the course of trial and the trial court has to satisfy itself that on the basis of the evidence led before it, the person, who has been left out from being arraigned as accused, could be tried together with the persons already arraigned as accused.

16. In light of the above proposition of law, if we examine the fact of the present case and the evidence led before the courts below during trial, it is clear that in the written complaint PW. 1 Bala Ram has specifically named 9 persons as assailants including the names of the petitioners and in his court statement also, he has clearly stated that along with the persons already arraigned as accused viz. Jena Ram, Manak Ram, Purkha Ram and Rameshwari, the petitioners viz. Bhagirath Ram, Ramniwas, Parma Devi, Munni and Rajendra had also assaulted Likhma Ram. Similarly PW. 4 Santosh, PW. 5 Bhanwar Lal, PW. 9 Likhma Ram-

injured and P.W. 10 Mahendra in their court statements have also named all the aforesaid 9 persons as assailants.

17. After going through the statements of above mentioned witnesses, it is clear that evidence was led before the trial court, which is sufficient to form an opinion that the petitioners who have not been arraigned as accused by the investigating agency could be tried together with the persons already arraigned as accused.

18. In view of the above discussions, this Court does not find any illegality in the order dated 20.07.2013 passed by Nyayadhikari, Gram Nyayalaya, Jayal, District Nagaur and in the order dated 20.01.2016 passed by Sessions Judge, Merta District Nagaur affirming the order of the trial court.

19. Accordingly, the instant criminal misc. petition fails and is hereby dismissed.

20. Stay petition also stands dismissed.