
(2006) 09 AHC CK 0112
In the Allahabad High Court

Bunti Dayal

APPELLANT

Vs

State of U.P. and Atal Ram Chaturvedi

RESPONDENT

Date of Decision : 06-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319
Evidence Act, 1872 — Section 32, 6
Penal Code, 1860 (IPC) — Section 302

Citation : (2006) 09 AHC CK 0112

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amar Saran, J.—This criminal revision has been filed by the accused against the order dated 10.7.2002 passed by the IIIrd Additional Sessions Judge, Mathura, rejecting the application for summoning Govinda in proceedings u/s 319 Cr.P.C. in S.T. No. 108 of 1996 State v. Bunti and Ors. u/s 302 IPC, P.S. Kotwali, district Mathura.

2. Counter affidavit has been filed by the informant, opposite party No. 2. which was served on the applicant's counsel on 22.10.2002. but no rejoinder affidavit has been filed.

3. I have heard Sri S.V. Goswami, learned Counsel for the applicant Bunti and learned A.G.A and Sri Nikhil Chaturvedi, learned Counsel for the opposite party No. 2 Atal Ram Chaturvedi.

4. Perusal of the impugned order dated 10.7.2002 shows that the Trial Court had rejected the application of the accused Bunti u/s 319 Cr.P. C. for summoning Govinda in exercise of power u/s 319 Cr.P.C. on the ground that P.W.1 and P.W. 2 did not depose about the involvement of Govinda in the offence and he did not find sufficient evidence to summon Govinda u/s 319 Cr.P.C.

5. Apparently there is no illegality in this order. It was argued by Sri Goswami

that the informant had mentioned the name of Govinda as one of the assailants in the F.I.R. and deceased Anand Pal had himself disclosed to the informant that Govinda also was one of the assailants, hence the statement stood on the footing of the dying declaration, Govinda's name came in 161 Cr.P.C. statements of Harihar Prasad and Radha Kant alias Gopal and hence there was sufficient evidence against Govinda under Sections 32 and 6 of the Evidence Act. Learned Counsel for the informant has contended that the version in the F.I.R. is based on hearsay and if on account of some confusion, the name of Govinda was mentioned, that was not sufficient ground for showing his complicity in the offence. He has annexed the statements of Harihar Prasad P.W. 1 and Radha Kant alias Gopal alias Lalu P.W.2 with his counter affidavit, the specific role of firing on stomach of the deceased was assigned to Pintu. He denied his statement to the I.O., that Govinda had fired at the deceased, but he said that Pintu had fired on the deceased. Similarly Harihar Prasad P.W.1 had also deposed that according to the disclosure made by the deceased to his brother informant Atal Ram Chaturvedi, it was Pintu's shot, which struck him. It is further noteworthy that the informant was not an eyewitness. In these circumstances, I find no error in law, if the learned Trial Judge has no sufficient evidence to summon the applicant in exercise of power u/s 319 Cr.P.C.

6. Learned Counsel for the informant has further drawn my attention to the decision of the Single Judge in Gyanendra Singh v. State of U.P. and Ors. 2005 (51) ACC 550, where it is mentioned that co-accused has no locus standi to contest the application u/s 319 Cr. P. C. Learned Counsel for the applicant has, however, placed reliance on the case of Lok Ram V. Nihal Singh and Anr. 2006 AIR 2129. No doubt, there is a line in paragraph 12 that power u/s 319 of the Code can be exercised by the court suo motu or on an application by some one including an accused already before it. However, in the same law report it is clearly mentioned that the power u/s 319 Cr. P.C. is to be used sparingly only if there are compelling reasons to take action against the persons who have not been summoned earlier. This law report also mentions that a person can be made an accused only on the basis of the evidence adduced before it and not on the basis of materials available in the charge-sheet or the case-diary because such material contained in the charge-sheet, or the case-diary do not constitute evidence. This passage gives a complete answer to the submission of the learned Counsel for the applicant that statement u/s 161 Cr.P.C. of Harihar Prasad and Radha Kant, who ought to have been read for summoning Govinda.

7. In this view of the matter, even without examining the question as to whether the co-accused has locus standi or not, I find there is no illegality in the order of the learned IIIrd Additional Sessions Judge dismissing the application to summon Govinda on the basis of the application made by co-accused in exercise of power u/s 319 Cr.P.C, if he was of the opinion that there was no sufficient evidence to connect Govinda with the offence. In such circumstances, it cannot also be ruled out that the present revision has been filed only with the objective to stay the criminal proceedings and indeed learned Counsel for the applicant, who was an

accused, has succeeded in getting the proceedings stayed by the order passed by this Court on 7.8.2002.

8. In view of the aforesaid, I find no force in this criminal revision. It is dismissed. Stay order granted on 7.8.2002 is vacated. Trial Court is directed to conclude the trial expeditiously. Office is directed to communicate this order to the Trial Court within two weeks.