

(2015) 08 KAR CK 0350
In the Karnataka High Court
Case No : Criminal Petition No. 7230 of 2011

Chandrashekaraiah and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 319(1)
Penal Code, 1860 (IPC) — Section 323, 324, 504

Citation : (2015) 08 KAR CK 0350

Hon'ble Judges : Rathnakala, J

Bench : Single Bench

Advocate : H.S. Santhosh, Advocate for Kesvy and Co., for the Appellant; B. Visweswaraiah, HCGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rathnakala, J—Heard both sides.

2. The petitioners are aggrieved by the order passed by the Addl. Civil Judge & JMFC, Tiptur, in C.C. No. 1007/10, whereby, the application filed by the prosecution under Section 319 of Cr.P.C. was allowed and the petitioners are issued summons to appear before the court as accused persons.

3. In pursuance of a complaint lodged by the 2nd respondent, the 1st respondent-police registered a case against four accused persons including these petitioners. At the time of filing of charge sheet, these petitioners were given up. In the FIR, the petitioners were arrayed as accused Nos. 1, 3 and 4 respectively. Other accused were charge sheeted for the offences punishable under Sections 323, 324 and 504 of IPC and the accused pleading not guilty to the accusations, the trial began.

4. During the course of trial, the complainant was examined as PW-1 and the complaint lodged by her was marked as Ex. P1. During the course of her evidence, she corroborated the complaint allegations which included the

petitioners herein. The eyewitness PW-2 also corroborated the allegations in the evidence of PW-1 against the petitioners. PWs 4 and 5 who are the circumstantial witnesses and who had gone to the spot subsequent to the incident also corroborated the allegation against these petitioners. During the course of investigation, the I.O. had recorded the further statement of the complainant and PWs 2, 4 and 5, whereby they withdrew their allegation against the present petitioners. These further statements since denied by the above witnesses during the cross-examination were marked for the defence side. At that stage, on the application filed by the prosecutor under Section 319 of Cr.P.C. to include these petitioners as accused, notice was issued to the proposed accused persons. After affording opportunity to both parties, the application was allowed.

5. The petitioners herein by placing reliance on the judgment of the Apex Court in the case of *Sarabjit Singh and Another Vs. State of Punjab and Another*, AIR 2009 SC 2792 : (2009) CLT 1327 : (2009) CriLJ 3978 : (2009) 8 JT 73 : (2009) 8 SCALE 175 : (2009) 16 SCC 46 : (2009) 8 SCR 762 : (2009) AIRSCW 4236 , contended that the authority of the Court under Section 319 of Cr.P.C. cannot be invoked by mere establishing its extraordinary power, it shall be exercised under rarest of rare circumstances. The Apex Court has laid down the stringent test as to under which circumstance such jurisdiction can be exercised and one of such stringent test is, whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned. The complainant and witnesses in their further statement have unequivocally had withdrawn their allegations against the petitioners herein, in the said circumstance, the court below was not justified in allowing the application of the prosecutor.

6. The relevant provision which is under debate in the present circumstance i.e., Section 319(1) of Cr.P.C. reads thus:--

"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".

7. The court below, in the body of its order has analyzed in detail the circumstances under which it can invoke its jurisdiction under Section 319 of Cr.P.C. On a careful reading of evidence of the witnesses, the court below, on facts, has found that there is prima facie material against the proposed accused persons which satisfies the ingredients of Section 319 of Cr.P.C. While the trial court, in its discretion has found that the prosecution has made out a case to proceed against the proposed accused persons, it has rightly marginalized the contentions about the improvements, omissions and contradictions appearing in the evidence of PWs. When the complainant consistently made allegations against the proposed respondents and disputed her further statements recorded

by the I.O., and her oral witness is corroborated by evidence of eyewitness and circumstantial witnesses giving up these petitioners, I am convinced that the order of the court below does not suffer with any infirmities.

8. Accordingly, the petition is dismissed.