
(2004) 09 AHC CK 0266
In the Allahabad High Court
Case No : Criminal Revision No. 4178 of 2004

Charan Jeet Singh alias Tinkoo Sardar	APPELLANT
Vs	
State of Uttar Pradesh	RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161(3), 173(6), 207, 208, 209
Penal Code, 1860 (IPC) — Section 302

Citation : (2004) 09 AHC CK 0266

Hon'ble Judges : K.N. Sinha, J

Bench : Single Bench

Advocate : D.S. Mishra and C.K. Mishra, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

K.N. Sinha, J.—Heard the learned Counsel for the revisionist and the learned A.G.A.

2. The brief facts of the case are that accused/revisionist was summoned u/s 302 I.P.C. in case crime No. 63 of 2004, Police Station Fazalganj, Kanpur Nagar. The case was committed to the Court of Session for trial on the date of charge. The revisionist brought to the notice of the Court that copies of some statements and some documents have not been supplied with. The said application was rejected by the trial Court holding that this is not the stage for demanding the copy.

3. The learned Counsel for the revisionist, has submitted that on the date of charge an application was moved on behalf of accused that statement of four witnesses and four papers, mentioned in the application have not been supplied with. The said application was rejected on the ground that it was not a proper stage for the supply of copy. The copy of the documents had to be supplied by the Magistrate u/s 207 Cr.P.C. in case the proceeding has been instituted on a police report. The present case at hand has been instituted on a police report and relates to Section 302 I.P.C, Section 207 Cr.P.C. lays down the provision for

supply of copy of police report and other documents.

4. The learned Counsel for the revisionist has invited my attention towards the copy of the application (Annexure - 2) which shows that the statement of witnesses Ravindra, Jagtar Singh, Prati Pal Singh and Surjeet Singh have not been supplied to him besides the inquest report, post mortem, G.D and memo of carrying the dead body etc. Section 207(iii) lays down that copy of the statements recorded under Sub-section (3) of Section 161 Cr.P.C. of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part, in regard to which a request for such exclusion has been made by the police officer under Sub-section (6) of Section 173 Cr.P.C., shall be supplied. The copy of the statement of witnesses Ravindra, Jagtar Singh, Prati Pal Singh and Surjeet Singh has to be supplied firstly, if their statements have been recorded u/s 161(3) Cr.P.C. and secondly, if the prosecution proposes to examine them as witness.

5. So far as the copies of other documents mentioned in the application of the revisionist, are concerned, it has to be supplied. Section 209 Cr.P.C. lays down that when the accused appears or is brought before the Magistrate and it also appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit the case to the Court of Session, after complying with the provisions of Section 207 Cr.P.C. or Section 208 Cr.P.C., as the case may be. In the present case it was the duty of the Committing Magistrate to have first satisfied itself whether the copy of the documents have been furnished to the accused or not, before passing the committal order.

6. The learned Counsel for the revisionist has admitted that copy of the documents were furnished but it was not a complete set of documents containing the statements and copy of the documents as mentioned in the application. The Magistrate furnished the copies which were received by the accused and thereafter the case was committed. It was the duty of the Magistrate to have ascertained whether the copy of all documents have been furnished or not.

7. Now, when the stage of charge has reached, the accused revisionist could know that documents mentioned in the application are wanting, then he moved before the Trial Judge, who rejected the same by observing that this was not a stage for supply of the copy of the documents.

8. As has been observed above, if the prosecution proposes to examine those witnesses the accused is entitled to the copy of the same. u/s 209 of the Code of Criminal Procedure, it was the duty of the Magistrate to have ascertained that provision of Section 207 Cr.P.C. has been complied with only then committal order should have been passed. The Committing Magistrate should not take it lightly and pass out in a routine way. The accused is not concerned whether the committing Magistrate had to supply the copies, and he has not so supplied.

9. Under these circumstances, it was not proper on the part of the Trial Court to refuse the supply of copies. He could have directed the Magistrate to supply the

copy or could direct the Copying Department to prepare the copies. Of course, the copy of the documents could have been refused if the prosecution does not propose to examine those witnesses or does not rely on those documents.

10. Thus, the revision is allowed. Order dated 10.9.2004 passed by the Additional District & Sessions Judge, Court No. 2, Kanpur Nagar in Revision No. 554 of 2004 (State v. Charan Jeet Singh alias Tinkoo Sardar) is set aside. It is hereby directed that the Court shall ascertain from the prosecutor whether he proposes to examine witnesses Ravindra, Jagtar Singh, Prati Pal Singh and Surjeet Singh as witness or not. In case prosecution proposes to examine these witnesses during the trial, the Court shall supply the copy of their statements recorded u/s 161 Cr.P.C. So far as the copy of documents inquest report, postmortem, extract of G.D. regarding carrying away the dead body, are concerned, the same shall also be supplied to the accused before the trial proceeds.