
(2010) 08 AHC CK 0437
In the Allahabad High Court

Girja Shanker and Others

APPELLANT

Vs

Shiv Shanker Shukla and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 482
Penal Code, 1860 (IPC) — Section 307

Citation : (2010) 08 AHC CK 0437

Hon'ble Judges : Kant Tripathi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shri Kant Tripathi, J.—Heard Sri P.K. Singh, learned Counsel for the applicants, learned AGA for the respondents and perused the record.

2. This is a petition, u/s 482 Cr.P.C. for quashing the order dated 19.06.1996, passed by the IIIrd Additional District and Sessions Judge, Kanpur Dehat in S.T. No. 149 of 1995 State v. Rajan and Ors., whereby the learned Additional District and Sessions Judge has summoned the applicants u/s 319 Cr.P.C. to face the trial in regard to the charge u/s 307 IPC.

3. Sri P.K. Singh, learned Counsel for the applicants submitted that the applicants were named in the FIR, but the Investigating Officer exonerated them and did not file any charge sheet against them. During the trial, the Additional District and Sessions Judge has recorded the statement of P.W. 1 Shiv Shankar Shukla and passed the summoning order without providing any opportunity to the accused to make cross examination and even without recording any finding that the evidence adduced during the trial, if unrebutted is sufficient to record a valid conviction. In absence of this finding the summoning order cannot be upheld.

4. The leaned AGA could not find any contrary view.

5. In view of the decision of this Court in the case of Rajol v. State of U.P. 2010 (5) ADJ 628 the summoning order cannot be upheld. In that case, this Court has

held in para 22 as follows.

22. In the cases of Sarabjeet (Supra), Brindawan Das, Michael Machado (supra) and Krishnappa (supra), it has been clearly held that summoning order should be passed only when the evidence, if uncontroverted, is of such a nature as to reasonably lead to conviction of the person sought to be summoned. The standard of evidence required for summoning an additional accused should be higher than the evidence required for framing charges because the jurisdiction u/s 319 CrPC is to be exercised sparingly in an extra ordinary situation. Whether or not any evidence is of such a quality as to record conviction if it remains uncontroverted, is a variable question depending upon the facts and circumstances of each case and no hard and fast rule can be laid down in this regard. However, the court considering the evidence for the purpose of Section 319 CrPC is not legally required to evaluate the evidence as it is ordinarily done while rendering the final judgment but the court has to see whether or not, the evidence on record appeals to the reason for the purposes of Section 319 CrPC and the story narrated by the witnesses against the person sought to be summoned is not improbable and absurd and a conviction is possible on such statements, if uncontroverted. A non observance of this legal requirement would render the summoning order illegal.

6. The petition is allowed and the summoning order dated 09.06.1996 is set aside. The learned Additional District and Sessions Judge is directed to reconsider the application u/s 319 Cr.P.C. in the light of observations made herein above and pass an appropriate order afresh in accordance with law.