

(2006) 02 RAJ CK 0022

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 750 of 1997

Guman Singh and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 323

Citation : (2006) 02 RAJ CK 0022

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Ajay Gupta, for the Appellant; Arun Sharma, Public Prosecutor, for the State, for the Respondent

Final Decision : Allowed

Judgement

Vineet Kothari, J.—This Misc. Petition is directed against the judgment dated 14.7.1997 passed by the learned Addl.Chief Judicial Magistrate, Sri Madhopur in Criminal Case No. 159/1997 in FIR No.55/1997, Police Station, Sri Madhopur whereby the learned Magistrate took cognizance for the offences under Sections 147, 323 IPC and also for offence u/s 3(1)(10) of the SC/ST (Prevention of Atrocities) Act, 1989.

2. Mr.Ajay Gupta, the learned counsel for the petitioners contends that since, the charge-sheet was filed only against the petitioner Guman Singh for offence under Sections 341 and 323 IPC in the Court, the learned Magistrate without any additional evidence could not take cognizance against any other person and adding such person as an accused in the said order of taking cognizance. He relied upon the Judgment rendered in the case of Raj Kishore Prasad Vs. State of Bihar and another, In support of his submissions that at the stage of committing the case for trial by the competent Court in accordance with Section 209 Cr.P.C. the role of the Magistrate is only to see that the package sent to the Court of Sessions is in order, so that it can proceed straightway with the trial and that nothing is lacking as per Sections 207 and 208 Cr.P.C. therefore, the learned

Magistrate at the stage of Section 209 Cr.P.C. is forbidden to apply his mind to the merit of the matter and determine as to whether any accused need be added or subtracted to face trial before the Court of Sessions.

3. In the present case, since, the police filed the charge-sheet only against the petitioner No. 1 Guman Singh, he contends that the learned Magistrate while committing the case of the Competent Court could not have added the names of other two petitioners namely Chhatrasal Singh and Babu Singh by invoking Section 319 Cr.P.C. There appears to be force in the contentions made by the learned counsel for the petitioners. He further submits that this petition has been filed on behalf of petitioner No. 1 Guman Singh only with reference to Ground No. (f) of the petition in which it has been mentioned that the Magistrate has no jurisdiction to take cognizance against the petitioner of the offence u/s 3 of the SC/ST (Prevention of Atrocities) Act, 1989 and at that point of time the matter was pending before the larger Bench of this Court. However, this issue has since been settled by the aforesaid judgment of the Hon''ble Supreme Court in the case of Gangula Ashok and Another Vs. State of A.P., .

4. Since, by the impugned judgment the learned Magistrate has added names of some more persons besides petitioner No. 1 Guman Singh invoking the powers of Section 319 Cr.P.C. though this observation has not been referred to in the order, the said impugned order adding these names besides Guman Singh can not be sustained in view of the law laid down by the Hon''ble Supreme Court.

5. Accordingly, this Criminal Misc.Petition is allowed. The impugned order dated 14.7.1997 is set-aside, qua Chhatra Pal Singh and Babu Singh only.