
(2007) 09 AHC CK 0193
In the Allahabad High Court

Havendra Singh and Harvendra Kumar	APPELLANT
Vs	
State of U.P. and Vidya Sagar	RESPONDENT

Date of Decision : 24-09-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 482
Penal Code, 1860 (IPC) — Section 307, 504, 506

Citation : (2007) 09 AHC CK 0193

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Rastogi, J.—This is an application u/s 482 Cr.P.C. for quashing the order dated 6.8.2007 passed by the Add. Districts Sessions Judge- I Agra n Sessions Trial No. 96 of 2007, State v. Rajesh and Ors. u/s 307 I.P.C. P.S. Barhan District Agra.

2. The facts relevant for disposal of this application are that on 30.6. 2005 a F.I.R. was lodged by vidya Sagar Dubey against Rajesh Kumar, Harvendra Singh, Ramesh Chandra and Satish Chandra under Sections 307, 504, 506 I.P.C. at P.S. Barhan District Agra in Case Crime No. 119A of 2005. The police after investigation submitted a charge sheet against Rajesh Kumar and Ramesh Chandra only and no charge sheet was submitted against the remaining accused persons. The case was committed to the court of Sessions against the above named two accused persons only but during the stage of trial Vidya Sagar P.W. 1 named all the four accused persons against whom the F.I.R. had been lodged, and then on the basis of his statement an application was moved by the prosecution for summoning Harvendra Singh and Satish Chandra u/s 319 Cr.P.C. That application was allowed by the learned Addl. Sessions Judge. Aggrieved with that order the accused applicant has filed this application u/s 482 Cr.P.C.

3. Learned Counsel for the applicant cited before me the rulings of Hon''ble Supreme Court in Palanisamy Gounder and Anr. v. State Represented by

Inspector of Police (2006) 1 SCC 568 and Mohd. Shafi v. Mohd. Rafiq and Anr. 2007 (58) ACC 254 (SC). In the case of Palanisamy Gounder (supra) the facts were that there were five accused and a charge sheet had been submitted against those five accused persons, but on the basis of further investigation the names of two accused were dropped and the case proceeded against three accused persons only. However at the stage of evidence, the prosecution witnesses named all the five accused persons and then an application was moved from the side of the prosecution to summon those two accused also who had been subsequently discharged. The Sessions Judge allowed that application and that order was confirmed by the High court, but on appeal the Hon"ble Apex Court allowed the same and set aside the order of the High Court as well as the summoning order passed by the learned Addl. Sessions Judge against those co accused who had been discharged on the basis of further investigation, and the Apex Court held that unless the Court is hopeful that there is a reasonable prospect of the case against the newly added accused ending in their conviction for the offence concerned, the Court shall refrain from adding them as accused. It further observed as follows:

In Michael Machado v. Central Bureau of Investigation construing the words "the court may proceed against such person" in Section 319 Cr.P.C., this Court held that the power is discretionary and should be exercised only to achieve criminal justice and that the court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. This Court further held that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has already proceeded and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. The court, while examining an application u/s 319 Cr.P.C., has also to hear in mind that there is no compelling duty on the Court to proceed against other persons. In a nutshell, it means that for exercise of discretion u/s 319 Cr.P.C. all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.

4. The Supreme Court illustrating the relevant law on the above point in the above the above manner, set aside the order passed by the Addl. Sessions Judge and the High Court, and the appeal of the appellants was allowed.

5. Similarly in the case of Mohd. Shafi (supra) the Hon"ble Apex Court made following observations:

From the decisions of this Court, as noticed above, it is evident that before a Court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the Court concerned may

also like to consider other evidence.

6. In the above case the appellant was named in the F.I.R. but no charge sheet was submitted against him. However, he was named as accused in the statement of P.W. 1. The prosecution moved an application for summoning Mohd. Shafi as an accused u/s 319 Cr.P.C. and that application was rejected by the learned Addl. Sessions Judge. It was also pointed out that cross examination of P.W. 1 had not taken place. Aggrieved with that order the complainant Mohd Rafiq filed an application u/s 482 Cr.P.C. for setting aside that order. That application was allowed by this Court and aggrieved with that order Mohd. Shafi filed an appeal before Hon"ble Supreme court. The Hon"ble Supreme Court allowed the appeal and set aside the order passed by the High Court and maintained the order of learned Addl. Sessions Judge making the above observations.

7. It is to be seen that in the present case also the P.W. 1 has not been cross examined and the accused applicant has been summoned on the basis of the examination in chief only of P.W. 1. This practice of summoning accused was not approved by the Hon"ble Supreme court in the above case of Mohd. Shafi (supra) and it was observed that before passing any order u/s 319 Cr.P.C. the Court must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood to be convicted and such satisfaction can be arrived at inter-alia upon completion of the cross examination of the said witness and for that purpose the court concerned may also like to consider other evidence. In the present case the Court has not expressed any opinion that the summoned accused is likely to be convicted and before passing the summoning order, cross examination of P.W. 1 was not done and other evidence of investigation which was in favour of the accused has also not been considered by him. Under these circumstances, the order passed by the learned Addl. Sessions Judge can not be sustained and it is liable to be set aside.

8. The present application u/s 482 Cr.P.C., is, therefore, allowed. The order dated 6.8.2007 passed by the Add. District & Sessions Judge- I Agra in Sessions Trial No. 96 of 2007, State v. Rajesh and Ors. u/s 307 I.P.C. P.S. Barhan District Agra, is set aside. The application for summoning the accused applicant u/s 319 Cr.P.C. is rejected. However, if at any subsequent stage of the proceedings there comes any credible evidence regarding participation of the present accused applicant in commission of the crime, the learned Addl. Sessions Judge can consider the feasibility of summoning him taking into consideration the observations of the Hon"ble Apex Court in the above quoted judgments.