
(1982) 05 RAJ CK 0009

In the Rajasthan High Court

Case No : Criminal Miscellaneous Application No. 170/79

Hukamaram, Umaram and Ramu Ram

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 07-05-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 202, 319, 482

Citation : (1982) WLN 244

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

Guman Mal Lodha, J.—In this application, u/s 482, Cr.P.C, against the order dated the 7th June, 1979 of Sessions Judge, Bikaner in Sessions case No. 59/76, Hukamaram, Umaram & Ramuram, the applicants, contend that the impugned order by which they have been called upon to face the trial and cognizance has been taken against them u/s 319, Cr.P.C. should be quashed, as it was done on the basis of police statements and no evidence has been recorded by the Sessions Judge.

2. Dr. Bhandawat, the learned Public Prosecutor could not dispute the facts as alleged by the petitioners but he submitted that a Sessions Judge was competent to take cognizance on the basis of the police statements recorded u/s 319, Cr.P.C. as per the decision of this Court in Ajayb Singh v. State of Rajasthan 1978 RLW 9.

3. It is not in dispute that application dated the 14th May, 1979 was moved by the Asstt. Public Prosecutor before the Sessions court for taking cognizance against these applicants before any evidence was recorded in sessions trial and on the basis of the police record. It is also not in dispute that the Sessions Judge has taken cognizance and called upon these three applicants-accused to face trial solely on the basis of the statements by police recorded u/s 161, Cr.P.C.

4. That raises controversy, whether a Sessions Judge during trial of criminal

case, can take cognizance against persons who are not accused and against whom the police after investigation has taken proceedings for dropping their names by not putting challan without recording any evidence in the court of Sessions. This finally raises question of interpretation of Section 319, Cr.P.C., Earlier, there was a controversy on this point because in Ajayab Singh's case (supra), this Court took the view that a Sessions Judge can take cognizance against any such persons who were not accused on the basis of the statements recorded by the police u/s 161, Cr.P.C. If it appears to him that an offence has been committed by any persons who is not an accused and for which he should be tried along with other accused. This view taken in Ajayab Singh's case was reiterated by this Court again in Hariram and Ors. v. State of Rajasthan 1979 Cri.L.R. (Raj.) 248.

5. However, recently on 1st May, 1982 while deciding a bunch of five criminal revision in which reference was made to a Division Bench, a Division Bench of this Court has taken the view that the view taken by this Court in Ajayab Singh & Harjiram's cases (supra) cannot be treated as good law. Sitting in division Bench along with Hon"ble Mr. Justice N.M. Kasliwal, I have in those references that for the purposes of Section 319, Cr.P.C., "evidence" means, evidence recorded" by the Sessions Judge in trial and neither statements u/s 161, Cr.P.C. of witnesses recorded by the Police, nor statements recorded u/s 164, Cr.P.C. nor statements recorded Section 202, Cr.P.C, can be treated as "evidence" for the purposes of Section 319, Cr.P.C.

6. In the above case of Sheoram Singh and Ors. v. State of Rajasthan D.B. Criminal Misc. Appl. No. 41/81 and four other connected cases, decided on 1st May, 1982 at Jaipur bench), I have dealt with the divergence of views on this point and after considering relevant provisions of the Evidence Act and the Code of Criminal Procedure, it was held that the police statements recorded u/s 161, Cr.P.C. cannot be treated as "evidence" for the limited purpose of Section 319, Cr.P.C.

7. The above judgment of Division Bench of this Court now holds the field and all earlier judgments contrary to it, cannot provide any guidance for the purpose of adjudication and decision of meaning & implications, ambit and scope of the phrase "evidence", as used in Section 319, Cr.P.C.

8. The issue involved in the present case, therefore, stands clinched and the petition deserves to succeed on this limited point.

9. The result is that this Misc. petition is accepted, the impugned order is quashed. However, it is made clear that the Sessions Judge would be free to take cognizance, they come to be challaned by the police, deserve to be tried because some offence, prime facie, is made out against them.