

(2001) 09 DEL CK 0024

In the Delhi High Court

Case No : Criminal M. (M) 2558 of 2000

Itender Singh Chadha and ors

APPELLANT

Vs

State (N.C.T. of Delhi)

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(2), 190, 190(1), 204

Penal Code, 1860 (IPC) — Section 323, 34, 341, 354

Citation : (2001) 94 DLT 426 : (2002) 61 DRJ 591

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : D.C. Mathur and Mohit Mathur, for the Appellant; M.S. Butaila, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chopra, J.—This petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code" only) read with Article 227 of the Constitution of India is directed against an order dated 2nd December, 1999 passed by learned Metropolitan Magistrate, New Delhi taking cognizance of the offences u/s 323, 341 354 read with Section 34 of the Indian Penal Code in case FIR No. 511/1997, Police Station Okhla Industrial Area.

2. I have heard Mr. D.C. Mathur, Senior Advocate appearing on behalf of petitioners and Mr. M.S. Butalia, Advocate for the respondents.

3. Learned counsel for the petitioners has assailed the impugned order on the ground that the learned Metropolitan Magistrate acted in violation of the provisions of Section 319 of the Code by taking cognizance against the accused petitioners without recording any evidence whatsoever. He submits that where in the course of any inquiry into, or trial of an offence, it appears from the evidence that any person not being the accused has committed an offence for which such person could be tried together with the accused, the Court may proceed against

such person for the offence, he appears to have committed. In support of his submissions, learned counsel for the petitioners relies upon the judgments Kishori Singh and Others Vs. State of Bihar and Others reported in (2001) Cri. L.J. 123, Raj Kishore Prasad Vs. State of Bihar and another, and Ranjit Singh Vs. State of Punjab, . Learned counsel for the State, on the other hand, has contended that the impugned order was passed by learned Metropolitan Magistrate u/s 190 of the Code and as such there is no violation of Section 319 of the Code.

4. The judgments relied upon by learned counsel for the petitioners are in respect of the summoning powers of Courts of Sessions and as such their Lordships had held that in view of Section 319 of the Code of Criminal Procedure cognizance of the offence could not be taken against someone without there being some evidence on record to satisfy the Court that the said person has committed any offence for which he could be tried together with the accused before the Court. Section 190 of the Code on the other hand empowers the Magistrate to take cognizance of any offence upon receiving a complaint of facts which constitute such offence or upon a police report of such facts or upon information received from any person other than a Police Officer or upon his own knowledge that such offence has been committed. In a recent judgment of the Apex Court in M/s. SWIL Ltd. Vs. State of Delhi and Another, , their Lordships of the Supreme Court had the occasion to examine similar arguments raised on behalf of summoned accused and made following observations in Para 6 of the Judgment:

"In our view, from the facts stated above it is clear that at the stage of taking cognizance of the offence, provisions of S.190, Cr. P.C. would be applicable. Section 190 inter alia provides that "the Magistrate may take cognizance of any offence upon a Police report of such facts which constitute an offence." As per this provision, Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate under S.204. Cr. P.C. is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge-sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the Police Officer and other documents tendered Along with chargesheet. Further, upon receipt of Police report under S.173(2), Cr.P.C., the Magistrate is entitled to take cognizance of an offence under S.190(1)(b) even if the Police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the Investigating Officer and independently applying his mind to the facts emerging from the investigation by taking into account the statements of the witnesses examined by the Police. At this stage, there is no question of application of S.319, Cr.P.C. Similar contention was negatived by this Court in Raghubans Dubey Vs. State of Bihar, :

"In our opinion, once cognizance has been taken by the Magistrate, he takes

cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the Police some other persons are involved. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence."

5. In view of the above referred judgment of the Hon"ble Supreme Court of India which is a complete answer to the contention raised on behalf of the petitioners, there remains no doubt about the legal proposition that Section 319 and 190 of the Code operate in entirely different fields and Section 319 in no manner whatsoever impinges upon the powers of the Magistrate u/s 190 of the Code. The impugned order passed by Learned Metropolitan Magistrate was on the basis of the report submitted to him u/s 173 of the Code of Criminal Procedure and the material available on record and as such it cannot be held that the learned Metropolitan Magistrate had no powers to take cognizance of the offence and summon the petitioners as accused two of whom had been shown in Column No. 2 and regarding remaining two, there was some material available to summon them as accused persons. The impugned order, Therefore, does not suffer from any infirmity.

6. No other point has been raised.

7. The petition, Therefore, stands dismissed. The learned Metropolitan Magistrate shall proceed further in accordance with law.