
(2011) 04 AHC CK 0019
In the Allahabad High Court
Case No : Criminal Revision No. 1688 of 2011

Jailesh Kushwaha

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

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

Citation : (2011) 04 AHC CK 0019

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Judgement

Vinod Prasad, J.—Heard Sri R. Dwivedi learned Counsel for the revisionist and learned A.G.A.

2. It is a unique case. Revisionist is aggrieved by summoning order dated 5.1.2011 passed by Additional Sessions Judge, FTC No. 26, Allahabad, in S.T. No. 72 of 2010 State v. Shiv Kumar @ Laloo and another.

3. Record reveals that according to the case of victim, three malefactors Jailesh, Shiv Kumar and Pullu outraged modesty of the victim by locking her inside a room. The present revisionist Jailesh Kushwaha was however not charge sheeted. Trial of Shiv Kumar @ Laloo and Pullu being S.T. No. 72 of 2010 proceeded. Since statement of the victim in court as well as her previous statement recorded u/s 164 Code of Criminal Procedure disclosed complicity of the revisionist as well, therefore, Additional Sessions Judge FTC No. 26, Allahabad, wielded power u/s 319 Code of Criminal Procedure and summoned the revisionist vide order dated 5.1.2011.

4. However, it is very bizarre that trial Judge proceeded with trial and acquitted two accused having the same charge after twenty one days which was the next date fixed in the trial without ensuring presence of the revisionist. Procedure adopted by trial Judge is unsanctified as summoning u/s 319 Code of Criminal Procedure is for the purpose of combine trial of the accused already facing trial

and person desired / summoned u/s 319 Code of Criminal Procedure Additional reason is that on the date, on which revisionist was summoned, arguments were already concluded and only judgment was to be pronounced. If the trial Judge was of the opinion that the two other malefactors having an identical charge, are entitled to acquittal, it does not stand to reason as to why he has wielded power u/s 319 Code of Criminal Procedure

5. Revisionist is directed to serve Respondent No. 2 through R.P.A.D. within one week from today.

6. Respondent No. 2 as well as learned A.G.A. may file counter affidavit within three weeks. Revisionist will have the same time to file rejoinder affidavit from the date of service of counter affidavit.

7. List in week commencing 23.8.2011 before the appropriate Bench for admission / final disposal.

8. Till the next date of listing, operation of impugned summoning order dated 5.1.2011 passed by Additional Sessions Judge, FTC No. 26, Allahabad, in S.T. No. 72 of 2010 State v. Shiv Kumar @ Laloo and another, shall remain in abeyance.