

(2017) 06 AHC CK 0023
In the Allahabad High Court
Case No : 1792 of 2017

Kalawati And 13 Others

APPELLANT

Vs

State Of U.P. And Another

RESPONDENT

Date of Decision : 22-06-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 401](#), [Section 227](#), [Section 228](#), [Section 209](#), [Section 225](#) - Calling for records to exercise powers of revision - High Courts powers of revision - Discharge - Framing of charge - Commitment of case to Court of Session when offence is triable exclusively by it - Trial to be conducted by Public Prosecutor

[Indian Penal Code, 1860](#), [Section 304](#), [Section 147](#), [Section 323](#), [Section 148](#), [Section 325](#), [Section 149](#), [Section 452](#), [Section 504](#) - Punishment for culpable homicide not amounting to murder - Punishment for rioting - Punishment for voluntarily causing hurt - Rioting, armed with deadly weapon - Punishment for voluntarily causing grievous hurt - Every member of unlawful assembly guilty of offence committed in prosecution of common object - House -trespass after preparation for hurt, assault or wrongful restraint - Intentional insult with intent to provoke breach of the peace

Citation : (2017) 06 AHC CK 0023

Hon'ble Judges : Sangeeta Chandra

Bench : Single Bench

Advocate : Ram Bilas Prasad

Judgement

1. This criminal revision has been filed against the order dated 6.5.2017 passed by learned Sessions Judge, Ballia in S.T. No.54 of 2017 arising out of Case Crime No.260 of 2016 (State Vs. Rama Shankar and others, under Sections-147, 148, 149, 452, 325, 323, 504, 304 I.P.C.). A prayer has been for setting aside the order on the ground that when the case was committed for sessions trial, charge-sheet was submitted only against 8 accused persons and therefore the application of the prosecution for summoning other accused namely (1) Smt.

Kalawati,

(2) Smt. Lalita, (3) Meena Verma,

(4) Smt. Anita Verma,

(5) Smt. Champa Verma, (6) Sanjay Verma,

(7) Basant Verma,

(8) Sachin Verma, (9) Ankit Verma,

(10) Golu,

(11) Ashok Verma, (12) Jitendra Verma,

(13) Sunily Yadav, and (14) Paras Nath Singh,

all residents of Kewara Milki, P.S-Bansdih, District-Ballia to face trial under Section-193 of the Cr.P.C. could not have been allowed by the Sessions Judge. Reliance has been placed by the learned counsel for the revisionist on a judgment rendered by the Hon'ble Supreme Court in the case of Ranjeet Singh vs. State of Punjab 1998 (7) SCC 149 where the Supreme Court had considered the question

"whether Sessions Court can add a new person to the array of accused in the case pending before it at the stage prior to collecting any evidence?"

2. The Supreme Court observed that while committing the case to Court of Session, the committing Court has a further duty in respect of the accused in the case under Section-209 Cr.P.C. for remanding the accused to custody once such committal has been made, subject to provisions relating to bail. The "accused" in the said section refers only to accused against whom the Magistrate has already issued summons warrant. At the time of trial commencing before the Sessions Court, Section-225 of Chapter XVIII of the Code, only says that prosecution shall be conducted by the public prosecutor and Sections-226 says that when the "accused" appears or is brought before the Court in pursuance of a committance of the case under Section-209, the prosecution shall open its case by describing the charge brought against the "accused" and stating by what evidence, it proposes to prove guilt of the "accused". It is clear that during the said stage, the Court of Session can only deal with the "accused", who is referred to in Section-209 and as per Section-227 and 228, either the said "accused" has to be discharged or charges have to be framed. Thereafter, plea of the accused has to be recorded under Section- 229. The stage of evidence collection commences only thereafter. So from the stage of committal till the Sessions Court reaches the stage indicated in Section-230 of the Code, it can deal with only the "accused" referred to in Section-209 of the Code. It further observed; "-----There is no intermediary stage till then for the sessions to add any other person to the array of the accused.-----"

3. Since evidence had not been collected and the stage of Section-230 had not

been reached in the instant case, it has been argued by the learned counsel for the applicants that the applicants could not be added as accused by the Sessions Court.

4. Per contra, Shri. K.K. Mani and R.P. Giri, who have filed their power on behalf of the opposite parties today have submitted before this Court that the case of Ranjeet Singh (Supra) was considered and disapproved in the Constitution Bench judgment in the case of Dharm Pal and others vs State of Haryana and another reported in 2014 (3) SCC 306. In the said case, the Constitution Bench was dealing with a reference made to it by a three judge bench finding divergence of views in the case of (Kishun Singh vs State of Bihar) 1993 (2) SCC 16 and Ranjeet Singh vs State of Punjab 1998 (7) SCC 149.

5. It has been argued by the learned counsel for the opposite party that the Constitution Bench found the view taken by the Bench in the case of Kishun Singh (Supra) as proper and disapproved the view taken in the case of Kishun Singh (Supra). He has referred to Para-23, 24, 25, 26, 27 and 28 of the said judgment which are quoted hereinbelow:- "-----23. The view expressed in Kishun Singh's case, in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the Final Report that may be filed by the police authorities under Section 173(3) of the Code and to proceed against the accused persons de hors the police report, which power the Session Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under Section 173(3) of the Code, he was helpless in taking recourse to such a course of action while the Session Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused.

24. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column no.2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

25. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the

Session Court.

26. Questions 4, 5 and 6 are more or less inter-linked. The answer to question 4 must be in the affirmative, namely, that the Session Judge was entitled to issue summons under Section 193 Cr.P.C. upon the case being committed to him by the learned Magistrate. Section 193 of the Code speaks of cognizance of offences by Court of Session and provides as follows :- "-----193. Cognizance of offences by Courts of Session. - Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."

The key words in the Section are that "no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code." The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr. Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said Section.-----" 27. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Session Judge.

28. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case (supra) that the Session Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon

committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.-----"

6. It has been argued by the learned counsel for the opposite party that in the order impugned, the learned Sessions Judge has relied upon the case of Dharm Pal and others vs State of Haryana and another (Supra) and a judgment of this Court in the case of Ram Singh and others vs State of U.P. and another reported in 2016 - Dand Nirnaya Sangrah-924 and hence, there is no need to interfere in the order impugned.

7. I find that the view taken by the learned Sessions Judge after considering the law as settled by the Hon"ble Supreme Court in his order dated 6.5.2017, does not suffer from any factual or legal infirmity to warrant any interference under limited jurisdiction exercised by this Court under Section-397 / 401 Cr.P.C.

8. Learned counsel for the revisionist has submitted that the revisionist Nos.1 to 5 are all ladies and revisionist Nos.8, 9 and 10 are children and they may be exempted from personally appearing in Court below and they may be permitted to file an appropriate discharge application in the aforesaid case, which it may be directed to be decided by the learned Court below as expeditiously as possible.

9. The request of the learned counsel for the revisionist appears to be reasonable. Let revisionist Nos.1 to 5 and 8, 9 and 10 move an appropriate discharge application through counsel before the Court concerned, which shall look into the same and pass an appropriate orders in accordance with law at the earliest.

10. This criminal revision stands dismissed subject to the observations made herein above.