
(2012) 05 AHC CK 0125
In the Allahabad High Court
Case No : Criminal Revision No. 822 of 2005

Om Pal	Vs	APPELLANT
State of U.P. And Another		RESPONDENT

Date of Decision : 28-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 307, 34

Citation : (2012) ACR 2836 : (2012) 8 ADJ 510

Hon'ble Judges : Jayashree Tiwari, J

Bench : Single Bench

Advocate : Sanjeev Kumar Pandey, for the Appellant;

Judgement

Hon"ble Mrs. Jayashree Tiwari, J.—Case called out in the revised list.

Learned Counsel for the revisionist is present.

Learned A.G.A. is also present.

The present criminal revision has been filed against the judgment dated 7.1.2005, whereby learned trial Court has held that the accused Om Pal is guilty of offence u/s 307/34 I.P.C. and has sentenced him to four years R.I. and fine of Rs. 2000/- and in default of payment of fine additional sentence of imprisonment S.I. for six months.

Thereafter, learned trial Court has proceeded to direct in the operative portion that the accused Om Pal is being summoned u/s 319 Cr.P.C. and he has been summoned on the basis of evidence available in the Court and for his trial separate file be prepared.

2. In this connection, Learned Counsel for the revisionist has challenged this order on the ground that powers u/s 319 Cr.P.C. are to be exercised during trial and not after conclusion of the trial.

In this regard, it will be expedient to go through the provisions of Section 319

Cr.P.C. which lays down as follows :

319. Power to proceed against other persons appearing to be guilty of offence.

(1) 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 any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

Thus, from a bare perusal of Section 319 Cr.P.C., it clearly comes out the power u/s 319 Cr.P.C. is to be exercised in the course of any inquiry or trial of an offence if it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

3. In the present case before us, trial of other accused Om Pal has been concluded, sentence imposed and fine has been pronounced against him. As such, it cannot said be to be a stage of inquiry or trial rather it is the stage of delivery of judgment when the trial is almost over after hearing both the parties, the learned lower Court has pronounced its verdict. A bare perusal of the order passed by the learned lower Court clearly shows that it has directed that the accused so summoned to be separately tried and separate file be prepared for his trial. It appears that exercise of power u/s 319 Cr.P.C. has been done at the stage of delivery of judgment, learned lower Court has failed to take note of necessary ingredients that there must be pendency of trial and the evidence adduced must create impression to the Court that it appears that the accused so called is involved in the offence and he is to be tried with other accused and trial is pending. As such, the exercise of power u/s 319 Cr.P.C. has not been made at appropriate stage of trial.

In the circumstances, order is liable to be quashed, so far as it concerns to accused Om Pal u/s 319 Cr.P.C. that part of order is quashed and learned lower Court is directed to draw any other procedure which he may in his option have against accused aforementioned strictly in consonance with the provisions of law.

The revision is partly allowed.