
(2014) 03 UK CK 0008

In the Uttarakhand High Court

Case No : Criminal Misc. Application No. 241 of 2010

Parvati Devi

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 319, 482 — Penal Code, 1860 (IPC) - Section 409, 420, 468

Citation : (2015) 1 UC 741

Hon'ble Judges : Umesh Chandra Dhyani, J.

Bench : Single Bench

Advocate : B.S. Adhikari, Advocate, for the Appellant; Suhail Ahmad Siddiqui, A.G.A., for the Respondent

Judgement

Umesh Chandra Dhyani, J.—The applicant, by means of present petition moved under Section 482 Cr.P.C., seeks to quash the order dated 08.02.2010 passed by Chief Judicial Magistrate, Bageshwar in Criminal Case No. 214/2006 State vs. Puran Chand Nainwal. When the impugned order was passed, a criminal case No. 214/2006 captioned as "State vs. Puran Chand Nainwal" was pending in the court of Chief Judicial Magistrate, Bageshwar. The prosecution evidence was concluded, the statement of the accused was recorded under Section 313 Cr.P.C., arguments of learned counsel for the parties were heard and eventually the criminal case was reserved for judgment. During the course of arguments, it came to the notice of Chief Judicial Magistrate that Smt. Parvati Devi, Gram Pradhan, Pothing too should have been made co-accused. The trial court, therefore, went through the documents brought on record and considered the statements of prosecution witnesses to come to a conclusion that Smt. Parvati Devi, Gram Pradhan should also be summoned as accused under Section 319 Cr.P.C. Learned Magistrate, therefore, issued summons to Parvati Devi to face the trial, vide impugned order dated 08.02.2010. Aggrieved against the same, present application under Section 482 Cr.P.C. was filed by the applicant.

2. According to the trial court, PW 1 Rohitash Kumar, Manager, UCO Bank stated that a joint account in the name of Gram Sabha, Pothing was opened in UCO bank and the said account was to be jointly operated by Gram Pradhan and Gram Panchayat Vikas Adhikari. PW 1 indicated, in his cross-examination, that the bearer of the cheque was Gram Pradhan, Pothing. The cheque would not be encashed unless there are signatures of Gram Pradhan on the back of the cheque. PW 2 Hari Kishan Chotrani also mentioned in his statement that the account was opened in the name of Gram Sabha, which was to be operated by the Gram Pradhan and Gram Panchayat Vikas Adhikari. The cheque in question was jointly signed by Gram Pradhan (applicant herein) and Gram Panchayat Vikas Adhikari. PW 4 Damodar Pant, District Development Officer, Pithoragarh stated that he initiated the departmental proceedings against Gram Panchayat Vikas Adhikari regarding cheating and embezzlement. PW 4 also stated that a ADO, Panchayat enquired into the matter and found that Gram Panchayat Vikas Adhikari and Gram Pradhan (applicant herein) withdrew a sum of Rs. 2,22,000/- through cheque. Out of such amount, a sum of Rs. 9,676/- was not deposited by the Gram Pradhan in the bank. The same was embezzled by her. The responsibility lay with Gram Pradhan and Gram Panchayat Vikas Adhikari jointly. When PW 5 Suresh Chandra Joshi, Assistant Development Officer enquired into the matter, he found that cash book was incomplete. In his cross-examination, PW 5 stated that neither monthly meetings of panchayat were convened for the last several years, nor statements of expenditure were presented. In his cross-examination, PW 5 also stated that the money was embezzled jointly by the Gram Pradhan and Gram Panchayat Vikas Adhikari. PW 9 Devi Dutt Joshi stated that the Gram Pradhan was removed after "no confidence motion" against her sailed through. Gram Pradhan Parvati Devi admitted in her statement that she deposited a sum of Rs. 9,676/- in the bank subsequently.

3. Daya Chand Tamta, Patwari, who investigated the case, admitted in his cross-examination that he wrote to the concerned authority for initiating appropriate proceedings against Gram Pradhan, but such proceedings were not initiated against her. She (applicant) deposited Rs. 9,676/- at a subsequent point of time when an FIR was lodged against her. It was therefore, found to be an appropriate case in which Gram Pradhan too was summoned to face trial. Learned Chief Judicial Magistrate passed such an order in exercise of his jurisdiction under Section 319 Cr.P.C. The question is - whether the learned Magistrate was justified in summoning the accused-applicants in exercise of his jurisdiction under Section 319 of Cr.P.C. or not?

4. It was held by Hon''ble Apex Court in Brindaban Das and Others Vs. State of West Bengal, that the power under Section 319 Cr.P.C. is to be invoked, not as a matter of course, but in circumstances where the invocation of such power is imperative to meet the ends of justice. The fulcrum on which the invocation of Section 319 Cr.P.C. rests is whether the summoning of persons other than the named accused would make such a difference to the prosecution as would enable it not only to prove its case but to also secure the conviction of the persons

summoned. It is only logical that there must be substantive evidence against a person in order to summon him for trial, although he is not named in the charge-sheet or he has been discharged from the case, which would warrant his prosecution thereafter with a good chance of his conviction.

5. It was observed by Hon''ble Supreme Court in Sarojben Ashwinkumar Shah etc. Vs. State of Gujarat and Another, that the power to proceed against any person, not being the accused before the court, must be exercised only where there appears during inquiry or trial sufficient evidence indicating his involvement in the offence as an accused and not otherwise. The power conferred upon the court is although discretionary but is not to be exercised in a routine manner - In a sense, it is an extraordinary power which should be used very sparingly and only if evidence has come on record which sufficiently establishes that the other person has committed an offence. A mere doubt about involvement of the other person on the basis of the evidence led in before the court is not enough. The court while exercising its power under Section 319 of the Code must keep in view full conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then.

6. The Hon''ble Apex Court further cautioned in respect of exercise of jurisdiction under Section 319 of Cr.P.C. in the case of Sarabjit Singh and Another Vs. State of Punjab and Another, . Relevant extract of the judgment is reproduced here-in-below:

"An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction.

For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned."

7. In the instant case, the applicant was not summoned on the strength of the examination-in-chief of one or two witnesses. She was summoned after the evidence of nine prosecution witnesses. Not only their examination-in-chief was recorded, they were also cross-examined on behalf of the accused Pooran Chand Nailwal. In other words, the accused-applicant was summoned after a full fledged enquiry. A reference of the evidence of the prosecution witnesses is given in the foregoing paragraphs of this judgment. This Court, therefore, need not repeat those evidences. An account was opened in the name of Gram Sabha, Pothing, which was to be jointly operated by the present applicant and Gram Panchayat Vikas Adhikari. There was an embezzlement for which both Gram Pradhan and Gram Panchayat Vikas Adhikari were to blame. Pooran Chand Nailwal was convicted by learned Chief Judicial Magistrate under Section 409, 420 & 468 IPC,

vide order dated 30.04.2010 in Criminal Case No. 244/2009. Feeling aggrieved by this, a criminal appeal was preferred by Pooran Chand Nailwal before the Sessions Judge, Bageshwar, but the same was dismissed, vide order dated 31.07.2010 passed by Sessions Judge, Bageshwar. Thus, one of the operators of the account of Gram Sabha, Pothing was convicted. It has come in evidence that the account was jointly operated by Gram Pradhan and Gram Panchayat Vikas Adhikari and unless the cheque was signed by Gram Pradhan concerned, the same could not be operated. There is, therefore, no hesitation in coming to the conclusion that the Gram Pradhan was rightly summoned by the Chief Judicial Magistrate to face the trial under Section 409 IPC. Learned Chief Judicial Magistrate rightly exercised his jurisdiction under Section 319 Cr.P.C. for summoning the accused (applicant herein). Sufficient reasons were assigned by the Magistrate to show as to why the jurisdiction under Section 319 Cr.P.C. was being exercised by him. There is no infirmity or illegality in the impugned order. As a consequence thereof, the application under Section 482 Cr.P.C. deserves to be dismissed and is accordingly dismissed. It is submitted by learned counsel for the applicant that the applicant is an old lady aged about 60 years, she has already been removed from the post of Gram Pradhan and, further, she has already deposited a sum of Rs. 9,676/- after lodging the FIR. Learned counsel for the applicant prayed that learned Magistrate be directed to decide the bail application of the applicant sympathetically at an early date. Considering the submissions of learned counsel for the applicant, it is provided that if the applicant surrenders before learned Magistrate and seeks bail, her bail application shall be decided by the Magistrate concerned as expeditiously as possible and without unreasonable delay.