

(2016) 07 GUJ CK 0024
In the Gujarat High Court

Case No : Criminal Revision Application (Against order passed by Subordinate Court) No. 250 of 2014

Rajubhai Navinbhai Soni

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 14-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 411

Citation : (2016) 168 AIC 396 : (2016) 3 GCD 2628 : (2016) 3 GLR 2706

Hon'ble Judges : Mr. S.G. Shah, J.

Bench : Single Bench

Advocate : Mr. Pravin Gondaliya, Advocate, for the Applicants No. 1 - 2; Mr. Amirkhan Pathan Advocate for Mr. Ashish M. Dagli, Advocate, for the Respondents No. 2; Mr. Manan Mehta, APP, for the Respondents No. 1

Final Decision : Partly Allowed

Judgement

Mr. S.G. Shah, J.—Rule. Mr. Manan Mehta learned APP waives service of rule on behalf of respondent no. 1- State and Mr. Amirkhan Pathan learned advocate for Mr. A.M. Dagli learned advocate waives service of rule on behalf of respondent no. 2.

2. The petitioners herein have challenged an order dated 31.3.2014 passed by the Sessions Court, Ahmedabad (Rural) below Exh. 92 in Sessions Case No. 48/2011. By such an order, the Sessions Court has, while allowing such application at Exh. 92 preferred by the prosecuting agency, directed to join present petitioners as an additional accused for committing the offence under section 411 of IPC, and to try them jointly with the original accused in such sessions case, who are facing the charge under section 302, 392 and 341 of IPC. The Sessions Court also directed to issue summons against both the accused.

3. Considering the facts and circumstances emerging from record and requisite discussions herein, it is quite clear and obvious that when original sessions case

is pending trial before the Sessions Court, and when out of two petitioners, at least, petitioner no. 1 certainly needs to be tried with other accused for the offences referred to herein above, it would not be appropriate for this Court to discuss the factual details and to determine anything on merits, which would otherwise prejudice either side and trial. Therefore, without entering into the minute details regarding charges levelled against original accused as well as present petitioners, the fact remains that there is prima-facie evidence found against present petitioner no. 1 during the course of trial, against the original accused to confirm that there is some role of present petitioner no. 1, if not for offence for all the sections, more particularly, under section 302 IPC, but at least there is some prima-facie evidence against him which goes to show that probably he has either helped the original accused or he has committed some offences, as observed by the learned Sessions Judge in the impugned order.

4. As aforesaid discussion of such facts would otherwise prejudice the petitioner also, and therefore, I do not wish to discuss that part but it is clear and certain that if the present petitioner no. 1 has purchased the ornaments in question only for the purpose of handing over it to the police as a muddamal article of the main offence, and that otherwise he had not done anything and that even purchasing of ornaments and handing over it to the police as muddamal was only because of undue pressure and harassment by the investigating agency and police, and if it is so, the petitioner could not have sat idle for couple of years and could not have come forward with altogether a different story during the trial. Even at the costs of repetition, I have to again record that further discussion of factual details emerging from the record is not warranted because it would otherwise prejudice the trial and the rights of the parties.

5. At the same time, it is also clear and obvious that though there is some evidence against petitioner no. 1 only because petitioner no. 1 has referred the name of his brother and petitioner no. 2 for some activity which is just like an attendant or helper at the relevant time, it cannot be said that he has also committed any offence in absence of any reliable evidence.

6. Learned advocate For the Petitioners is relying upon the decision in the case of Sarabjit Singh & Anr. v. State of Punjab, reported in AIR 2009 SC 2792. However, reading of such judgment, makes it clear that even in such judgment, the Hon^{ble} Supreme Court has, on the contrary, held that the courts have powers to add any persons as an additional accused and bare reading of section 319 of the Code makes it clear 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 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. Though, in this reported judgment, the Hon^{ble} Supreme court has cautioned the courts to exercise such powers only upon sufficient and cogent reasons are there to do so, the Hon^{ble} Supreme Court has recorded that practically a case of Hardeep Singh v. State of Punjab, reported in

JT 2008 (12) SC 7 has been referred to the larger Bench, and therefore, practically, a decision of larger Bench would be more relevant than this judgment.

7. For my such determination, I am relying upon the decision of the Larger Bench of the Hon^{ble} Supreme Court, wherein, the Hon^{ble} Supreme Court has observed as follows in Hardeep Singh v. State of Punjab & Ors., reported in AIR 2014 SC 1400:

"16. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot free by being not arraigned in the trial in spite of possibility of his complicity which can be gathered from the documents presented by the prosecution.

17. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

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43. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) Cr.P.C. can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Section 207/208 Cr.P.C., committal etc., which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind.

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71. It is, therefore, clear that the word "evidence" in Section 319 Cr.P.C. means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation.

72. The inquiry by the court is neither attributable to the investigation nor the prosecution, but by the court itself for collecting information to draw back a curtain that hides something material. It is the duty of the court to do so and therefore the power to perform this duty is provided under the Cr.P.C.

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75. Though the facts so received by the magistrate or the court may not be evidence, yet it is some material that makes things clear and unfolds concealed or deliberately suppressed material that may facilitate the trial. In the context of Section 319 Cr.P.C. it is an information of complicity. Such material therefore, can be used even though not an evidence in stricto sensu, but an information on record collected by the court during inquiry itself, as a prima facie satisfaction for exercising the powers as presently involved.

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77. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused.

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79. The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 Cr.P.C. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial."

8. Otherwise also, the impugned order is simply regarding issuance of summons to the present petitioners and thereby they would be entitled to entire set of police papers before framing of charge against them, and therefore, if at all, they are sure or certain that there was no evidence against them, they have a chance to initiate appropriate proceedings in accordance with law to save their rights, but so far as impugned order is concerned, I do not see any irregularity or illegality that the impugned order is totally based upon the available evidence before the Sessions Court. It cannot be ignored that powers under section 319 of the Code is to be used sparingly, however, the trial courts are empowered to exercise such rights as and when there is some material evidence before it which results into prima-facie evidence against any third person so as to prove that he has also committed any offence with reference to the case which is under trial. In view of such facts, there is no substance in the revision preferred by the petitioner no. 1, however, so far as petitioner no. 2 is concerned, in absence of any prima-facie evidence against him, there is substance in the revision preferred by the petitioner no. 2.

9. In view of above facts and circumstances, the present revision application is partly allowed. So far as petitioner no. 2-Prakashbhai Navinbhai Soni, is concerned, the impugned order is quashed and set aside, whereas, the revision by petitioner no. 1-Rajubhai Navinbhai Soni is hereby dismissed. Rule is made

absolute qua petitioner no. 2 and rule is discharged qua petitioner no. 1. Interim relief is vacated.