
(1998) 07 AHC CK 0014

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2627 of 1998

Ram Babu and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 24-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 307, 319

Citation : (1998) 2 ACR 1218

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : R.C. Pal, for the Appellant; A.G.A., for the Respondent

Judgement

S.K. Phaujdar, J.—The matter was heard on 22.7.1998.

2. In Sessions Trial No. 25 of 1995, the First Addl. Sessions Judge, Farrukhabad, had recorded an order on 16.6.1998 and had taken an action u/s 319, Cr. P.C. to summon the present applicants as accused in the trial. It appears that the names of the applicants were there in the F.I.R. and the complainant made an allegation that their names were deliberately dropped by the Investigating Officer in the charge-sheet. One witness was examined in the sessions trial and in his statement, involvement of these two applicants in the alleged offence was alleged. At this stage, the complainant made a prayer of for action u/s 319, Cr. P.C. and the impugned order was passed.

3. It was argued that during investigation, the complainant did not assign any role in the incident to the present two applicants and, accordingly, no charge-sheet was submitted and when the report was accepted by the Magistrate, it was not open for the sessions court to summon these applicants even u/s 319, Cr. P.C. It was stated that the examination-in-chief of the witness before the sessions court was not evidence as it was not tested by cross-examination. This view may not be a correct one as the insistence for cross-examination of a witness before taking action u/s 319, Cr. P.C. would frustrate the very purpose of

this section as the section requires joint trial of the existing accused persons and the persons summoned u/s 319, Cr. P.C. To insist upon cross-examination would, thus, be an unnecessary exercise.

4. In accepting a charge-sheet or a report of the police the Court, taking the best view of the matter for the applicants, had discharged them. This discharge could not amount to an acquittal as per Explanation to Section 307, Cr. P.C. and even if the order of the Magistrate amounted to a discharge, a further trial may not be barred and, as such, the power u/s 319, Cr. P.C. could be exercised even for a person against whom charge-sheet was not submitted.

5. The order in question was passed by a sessions court and reference may be made to Section 193, Cr. P.C. which speaks of cognizance of offences by a Court of session. A court of session is to take cognizance of an offence only upon a committal of the matter to it by a Magistrate. The commitment is made of the case itself and not of any particular person. Thus, Section 193 empowers the sessions court to take cognizance of the case and not only of the persons against whom charge-sheet was submitted. The sessions court, in addition to the power u/s 319, Cr. P.C., had every authority to summon such other person who, in its opinion, was involved in that case.

6. Reliance was placed on a decision of the Supreme Court, as reported in AIR 1990 SC 2158 and the Hon"ble Court dealt with the powers of Section 319, to say that it could be used against persons not being the accused in the trial. The Court also explained the term "accused". This controversy, however, does not arise in this case as Section 193, Cr. P.C. can always be pressed into action in support of the direction given by the sessions court as he had taken cognizance of the offence itself and had, therefore, every authority to summon the persons appearing to be involved in the matter.

7. In view of the above, the present application stands dismissed.