
(2013) 12 CHH CK 0003
In the Chhattisgarh High Court
Case No : Criminal Revision No. 580 of 2013

Ram Kishan

APPELLANT

Vs

State of Chhattisgarh, DL Sahu and Rajesh Jaina

RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2014) 1 CGLJ 585 : (2014) CriLJ 1235

Hon'ble Judges : T.P. Sharma, J

Bench : Single Bench

Advocate : Dharmesh Shrivastava, for the Appellant; Lav Kumar Sharma, Panel Lawyer respondent No. 1 and Shri Sanjay Patel, counsel for respondents 2 and 3, for the Respondent

Judgement

T.P. Sharma, J.—By this revision, the applicant has challenged the legality and propriety of judgment dated 07.8.2013 passed by Additional Sessions Judge (FTC) Korba in Criminal Revision No. 32/2013, reversing the orders dated 18.02.2013 and 05.3.2013 passed by Judicial Magistrate First Class, Korba in Criminal Case No. 20/2012, whereby the Court below has allowed the application filed u/s 319 of the Code of Criminal Procedure, 1973 (for short "the Code") for impleading two persons namely DL Sahu (Respondent No. 2) and Rajesh Jaina (respondent No. 3) as accused persons, which has been reversed by the revisional Court. Learned counsel for the applicant submits that main accused Hemant Jaina along with respondents 2 & 3 have committed the aforesaid offence of theft and the applicant has intimated the police, but the police has not registered the offence against respondents 2 & 3. He has also made a written complaint to Superintendent of Police against respondents 2 & 3, but the police has not prosecuted respondents 2 & 3. The applicant deposed before the Court below that accused Hemant Jaina along with respondents 2 & 3 have committed the aforesaid offence and thereafter application u/s 319 of the Code has been filed before the Court below. Show-cause notice has been issued to respondents 2 & 3 vide order dated 18.02.2013. In response to the notice, they appeared before the Court on 05.3.2013. On that day charges for the offence u/s 379/34

IPC has been framed against respondents 2 & 3. Both the orders have been quashed by the revisional Court. By quashing the said order, the revisional Court has committed illegality. Order passed by the trial Court was well founded and based on the material.

2. During the course of argument, copy of deposition recorded during the trial has shown by learned counsel for the applicant, which is taken on record.

3. On the other hand, learned counsel for respondents 2 & 3 have opposed the above and submits that the applicant or the prosecution have not collected any material against respondents 2 & 3. The prosecution witnesses have also not deposed anything substantially against respondents 2 & 3 for their impleadment in crime in question. But the Court below has impleaded respondents 2 & 3 by order dated 18.02.2013, which has been quashed by the revisional Court. The revisional authority has rightly quashed the orders passed by the trial Court.

4. As per the submissions of the parties, orders impugned, copy of complaint made to Superintendent of Police and copy of deposition of the applicant, initially charge sheet was filed against one accused Hemant Jaina, whom the applicant has given a loan of Rs. 500/-, who has seen the ATM card of the applicant and was the tenant of the applicant who left his house, thereafter the applicant noticed that the ATM card was missing. On the basis of the report, FIR was registered against Hemant Jaina and charge sheet was filed against him. Statement of the applicant was recorded during the course of investigation u/s 161 of the Code, which does not reflect the names of respondents 2 & 3. As per the written complaint, Hemant Jaina along with respondents 2 & 3 have committed the aforesaid offence. Relevant part of the complaint read thus:

5. As per para 4 of the deposition of the complainant, which reads-

, Hemant Jaina along with respondents 2 & 3 have committed the offence. Except this submission, nothing has been said by the applicant or any other witnesses. In para 26 of his cross-examination, the applicant has deposed as follows:

6. Aforesaid part of the complaint and the deposition of the complainant/applicant reveals that respondents 2 & 3 along with Hemant Jaina have committed the offence. Details have been given relating to accused Hemant Jaina but not relating to respondents 2 & 3. In absence of any details, it would not be possible for the investigating officer to implead respondents 2 & 3. Para 4 of the deposition of the applicant was also not prima facie sufficient to implead respondents 2 & 3 in the aforesaid trial for the commission of offence of theft. Therefore, the trial Court ought not to have impleaded respondents 2 & 3 as accused by impleading them as accused, u/s 319 of the Code, the trial Court has committed illegality which has been quashed by the revisional Court. The revisional Court has not committed any illegality requiring any interference by this Court. The trial Court has committed illegality in issuance of show-cause notice to respondents 2 & 3 which is contrary to the provisions contained in

Section 319 of the Code, which reads thus:

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 persons 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.

(2) where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then (a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard; (b) subject to the provisions of clause (a), the case may be proceeds as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

7. In order to proceed u/s 319 of the Code for impleading person not being accused, on the basis of evidence appears against him, the State is required to record its finding showing material for impleading the person u/s 319 of the Code. In case of impleading a person as accused, issuing show-cause notice is not in consonance with Section 319 of the Code, the Court is required to issue process. For the foregoing reasons, I do not find any scope for interference exercising revisional jurisdiction. Consequently, the revision is liable to be and is hereby dismissed.