
(2014) 02 RAJ CK 0053

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 48/2014

Ram Pratap and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 200, 201, 202 — Penal Code, 1860 (IPC) - Section 120(B), 363, 366, 366-A, 376 — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)(2), 3(2)(5)

Citation : (2014) 02 RAJ CK 0053

Hon'ble Judges : Banwari Lal Sharma, J.

Bench : Single Bench

Advocate : Mahesh Bora, Sr. Advocate and Nishant Bora, for the Appellant; Mahipal Bishnoi, Public Prosecutor, for the Respondent

Final Decision : Disposed off

Judgement

Banwari Lal Sharma, J.?This revision petition is listed for admission today but with the consent of learned counsel for the petitioners and the learned Public Prosecutor the revision petition is being finally disposed of.

2. Heard Mr. Mahesh Bora, learned senior counsel with Mr. Nishant Bora, appearing for the petitioners and learned Public Prosecutor and perused the impugned order dated 16.11.2013 passed by learned Special Judge SC/ST (Prevention of Atrocities) Act cases, Bikaner (hereinafter referred to as "the learned trial court") in Sessions case No. 13/12 whereby the learned trial Court, while invoking the provisions under Section 319 of Cr.P.C., after taking cognizance against the petitioners under Sections 120(B), 363, 366, 366-A, 376 Indian Penal Code and Sections 3(1)(2), 3(2)(5) SC/ST (Prevention of Atrocities) Act cases and summoned them through warrant of arrest.

3. Learned Senior counsel Mr. Bora has submitted that prosecutrix, in her police statement recorded on 16.02.2012, did not name the present accused-petitioners. She made allegations only against Om Prakash Nai and Kamla.

Thereafter in her statement recorded under Section 164 Cr.P.C. on 23.02.2012, she improved her version and leveled allegations against the present petitioners also regarding kidnapping and committing rape. He further submitted that for invoking provisions under Section 319 Cr.P.C. court has to see that available evidence is sufficient or not for convicting the person against whom cognizance is proposed. Without considering this fact learned trial court took cognizance against the present petitioners which is not sustainable. He also submitted that in like cases where cognizance is being taken under Section 319 Cr.P.C., arrest warrant should not be issued directly. Instead of arrest warrant accused should be summoned through summon or Bailable Warrant. Learned senior counsel relied upon the judgments delivered in the cases of Hardeep Singh Vs. State of Punjab and Others etc. etc., and Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, .

4. Per contra learned Public Prosecutor Mr. Mahipal Bishnoi supported the impugned order and submitted that prosecutrix, in her statement under Section 164 Cr.P.C. and before the trial court clearly stated that the statement which she deposed before the court was also stated before the police but the Investigating Officer did not record her statement as she stated before him. This fact is subject to trial after putting the accused for trial.

5. I have considered the submissions made by learned counsels and learned Public Prosecutor and perused the impugned order and available record.

6. Initially Hadmana Ram (complainant) lodged a missing report of her daughter (prosecutrix) on 13.02.2012 at Police Station Nokha (Bikaner) which is reproduced as under:

7. The report on same facts was again submitted by complainant Hadmana Ram on 14.02.2012, on which a case was registered under Sections 363, 366, 366-A, 376 Indian Penal Code and Sections 3(1)(2), 3(2)(5) SC/ST (Prevention of Atrocities) Act cases as FIR No. 76/12 and investigation was commenced. During investigation prosecutrix was recovered on 16.02.2012 from the house of Mani Ram Nai of Village Goluwala and her statement under Section 161 Cr.P.C. was recorded by the Investigation Officer wherein she stated as under:-

8. Thereafter her statement under Section 164 Cr.P.C. was recorded before the Magistrate by the police on 23.02.2012, wherein she deposed as under:

9. Thereafter during trial, statement of prosecutrix was recorded on 10.08.2012 wherein she stated as under:-

10. In cross examination few suggestions were put to prosecutrix by the learned counsel for co-accused Om Prakash regarding improvement from her police statement for which she stated that she gave same statement before police too but police recorded at its own which police did not read over to her.

11. Larger Bench of Hon"ble Supreme Court in the case of Hardeep Singh etc. etc. v. State of Punjab & Ors. etc. etc. (supra) held as under:

"Section 319 Code of Criminal Procedure, significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Code of Criminal Procedure; and under Section 398 Code of Criminal Procedure are species of the inquiry contemplated by Section 319 Code of Criminal Procedure, Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Code of Criminal Procedure, and also to add an accused whose name has been shown in Column 2 of the chargesheet.

In view of the above position the word "evidence" in Section 319 Code of Criminal Procedure has to be broadly understood and not literally i.e. as evidence brought during a trial.

Considering the fact that under Section 319 Code of Criminal Procedure a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Code of Criminal Procedure the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Though under Section 319(4)(b) Code of Criminal Procedure the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction will be required for summoning a persons under Section 319 Code of Criminal Procedure would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial-therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Code of Criminal Procedure provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Section 300 and 398 Code of Criminal Procedure has to be complied with before he can be summoned afresh."

12. In Mohd. Shafi v. Mohd. Rafiq & Anr. (supra), the Hon"ble Supreme Court held as under:

"The Trial Judge, is noticed by us, in terms of Section 319 of the Code of Criminal Procedure was required to arrive at his satisfaction. If he thought that the matter should receive his due consideration only after the cross-examination of the

witnesses is over, no exception thereto could be taken far less at the instance of a witness and when the State was not aggrieved by the same.

From the decisions of this Court, as noticed, above it is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that accused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross examination of the said witnesses. For the said purpose, the court concerned may also like to consider other evidence."

13. In the matter of Michael Machado and Another Vs. Central Bureau of Investigation and Another, , the Hon"ble Supreme Court has held as under:-

"The Court must have reasonable satisfaction from the evidence already collected regarding two aspects while invoking power under S. 319 to proceed against other persons appearing to be guilty of offence. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused. But even then, what is conferred on the Court is only a discretion as could be discerned from the words "the Court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. Judicial exercise is called for keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of the time which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the Court to proceed against other person."

14. Though in the matter of Mohd. Safi v. Mohd. Rafiq (Supra), Hon"ble Supreme Court held that:

"Before a court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted"

15. But in the case of Hardeep Singh etc. v. State of Punjab (supra), the Larger Bench of the Hon"ble Supreme Court held that:

"The degree of satisfaction that will be required for summoning a person under Section 319 Code of Criminal Procedure would be same as for framing of charge"

16. Therefore in view of the larger Bench judgment Mohd. Safi v. Mohd. Rafiq & Anr. (supra) does not have help the petitioner in the case in hand. Prosecutrix whose date of birth is 01.01.2000 in the Transfer Certificate issued by Head Mistress, primary School, Kakra, her age on the date of incident, i.e. on 12.02.2012 was about 12 years and she made allegations against the present petitioners Ram Pratap and Anil in clear terms in her statement recorded under

Section 164 Cr.P.C. and she made allegations against the Investigation Officer that he did not record her statement as verbatim. Though she stated before him on same facts which were recorded under Section 164 Cr.P.C.

17. Considering the statement of prosecutrix under Section 164 Cr. P.C. and during trial by the learned trial court, learned trial court found sufficient material to take cognizance against the present petitioners for offence under Section 363, 366, 366-A, 376 Indian Penal Code and Sections 3(1)(2), 3(2)(5) SC/ST (Prevention of Atrocities) act cases which does not require any interference of this court.

18. So far as summoning of present petitioners by arrest warrant is concerned in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, , the Hon"ble Supreme Court has held as under:

"Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have desired result. This could be when:

? It is reasonable to believe that the person will not voluntarily appear in court; or

? the police authorities are unable to find the person to serve him with a summon; or

? it is considered that the person could harm someone if not placed into custody.

As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequence and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive."

19. Considering the overall facts of the case and relying the Inder Mohan's case (supra), I deem it proper to convert arrest warrant to Bailable Warrant for Rs. 20,000/-.

20. With these observations, the Revision Petition is disposed of.