

(2000) 07 DEL CK 0133

In the Delhi High Court

Case No : Criminal M. (M) . No. 2520/99 and 3923/99

Satbir Singh and Others

APPELLANT

Vs

Ram Nath Khanna

RESPONDENT

Date of Decision : 04-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 34, 406, 420

Citation : (2000) 5 AD 645 : (2000) 86 DLT 560

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Ms. Ritu Aggarwal, for the Appellant; Mr. R.K. Kataria, for the Respondent

Final Decision : Allowed

Judgement

M.S.A. Siddiqui, J.—Challenge in these petitions filed u/s 482 Cr. P.C. is to the order dated 6.11.1998 passed by the Metropolitan Magistrate, Delhi directing impleadment of the petitioners as accused in the criminal case filed by the respondent. Both the petitions are being disposed of by this common order.

2. Briefly stated the facts giving rise to these petitions are that on 23.3.1998, M/s. Okara Agro Industries Ltd., (hereinafter referred to as the Company) issued a cheque for Rs. 26,000/- in favor of the respondent. The cheque was signed by the authorised signatory, namely, Shri Narender Jeet Singh. When the cheque was presented for encashment, the drawee bank dishonoured it on 27.3.1998 on account of insufficiency of funds. Respondent issued a notice to the said company on 1.4.1998 calling upon it to pay the amount. As the company failed to pay the amount, a complaint was filed before the Metropolitan Magistrate on 27.4.1998 against the company and its authorised signatory u/s 138 of the Negotiable Instruments Act and Sections 420/406/34 IPC. On 3.6.1998 the respondent filed an application before the Metropolitan Magistrate for impleadment of the

petitioners and others as accused in the case. By the impugned order dated 6.11.1998, the learned Magistrate directed that the petitioners should be impleaded as accused persons and be tried along with the remaining accused persons. Aggrieved thereby, the petitioners have come up before this Court u/s 482 Cr.P.C.

3. It needs to be highlighted that the complaint was not filed against the petitioners and there is not even a whisper in the complaint or shred of evidence nor anything to show, apart from the application filed by the respondent that there is any act committed by the petitioners from which a reasonable inference can be drawn that they could also be vicariously liable for the offences alleged to have been committed by the company. The Court can proceed against a person u/s 319 Cr.P.C. only if there is some evidence to show that the same person has committed an offence of which the Court can take cognizance. In the absence of any such evidence such person cannot be summoned as co-accused. In *Joginder Singh and Another Vs. State of Punjab and Another*, , the Supreme Court had an occasion to consider the scope and object of Section 319 of the Code of Criminal Procedure. It was observed that:

"A plain reading of Section 319(1), which occurs in Chapter XXIV dealing with general provisions as to inquiries and trials, clearly shows that it applies to all the Courts including a Sessions Court and as such a Sessions Court will have the power to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused."

4. In *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, , it was held that the power u/s 319 Cr. P.C. should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. In the instant case, the impugned order does not indicate about existence of any evidence on record to connect the petitioners with the alleged offences. In the absence of any evidence, the application filed by the respondent for impleading the petitioners as co-accused is premature and the impugned order directing to issue process against them cannot be sustained in law.

5. For the foregoing reasons, both the petitions are allowed and the impugned order dated 6.11.1998 insofar as it directs that the petitioners should be impleaded as accused persons and be tried along with the remaining accused persons is quashed. I would, however, make it plain that the mere fact that the proceedings have been quashed against the petitioners will not prevent the court from exercising its discretion u/s 319 Cr. P.C. if it is fully satisfied that a case for taking cognizance against them has been made out on the evidence led before it.