

(2011) 02 AHC CK 0173
In the Allahabad High Court
Case No : Criminal Revision No. 787 of 2011

Shafi Ahmad and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 504

Citation : (2011) 02 AHC CK 0173

Hon'ble Judges : Bala Krishna Narayana, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bala Krishna Narayana, J.—Heard Sri Rajiv Lochan Shukla, learned Counsel for the revisionists , Sri S.S. Mishra for the O.P. No. 2 and learned A.G.A. for the State.

2. This revision is directed against the judgment order dated 14.1.2011 passed by Additional District & Sessions Judge, Court No. 8, Fatehpur in S.T. No. 148 to 149 and 584 of 2008 arising out of Case Crime No. 194 of 2007, under Sections 147, 148, 149, 302, 504 and 506 I.P.C., Police Station Hussainganj, District Fatehpur, whereby the revisionists were summoned u/s 319 Code of Criminal Procedure to face trial.

3. Learned Counsel for the revisionists submitted that the Court below while summoning the revisionists as additional accused has committed illegality in placing reliance upon the case diary and the other material collected during investigation instead of considering the evidence which were adduced before the Court. He next submitted the Apex Court in the Case of Y. Saraba Reddy Vs. Puthur Rami Reddy and Another, has held that:

Such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can

take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence.

4. Per contra learned A.G.A. made his submissions in support of the impugned order.

5. I have examined the submissions advanced by the learned Counsel for the parties, perused the impugned order and the other materials brought on record as well as the case law relied upon by the learned Counsel for the revisionists in support of his submissions.

6. In Mohd. Shafi v. Mohd. Rafiq and Anr. (LVIII) 2007 ACC 254, the Apex Court had held that before a Court exercising its discretionary jurisdiction in terms of Section 319 Cr.P.C., it must arrive at the satisfaction that there exists a possibility that the accused so summoned, is in all likelihood, liable to be convicted.

7. In Sarabjit Singh and Anr. v. State of Punjab and Anr. (2010) 2 SCC 141, the Apex Court held that for exercising extra ordinary jurisdiction u/s 319 Cr.P.C., the Courts are required to apply stringent tests; one of the test being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned and mere existence of a prima facie case may not serve the purpose.

8. Since learned trial court has not recorded his satisfaction as above, the impugned order cannot be sustained and is liable to be set aside.

9. The application in revision is allowed and the impugned order dated 14.01.2011 is set aside. The learned Additional District and Sessions Judge, Court No. 8, Fatehpur is directed to decide the application u/s 319 Code of Criminal Procedure afresh in accordance with the directions of the Apex Court in the cases of Mohd. Shafi and Sarabjit (supra).