
(2014) 11 AHC CK 0126
In the Allahabad High Court
Case No : Criminal Revision No. 3216 of 2014

Shahzad and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 207, 209, 226, 227
Penal Code, 1860 (IPC) — Section 306, 376(2)(g), 420, 506(II)

Citation : (2014) 11 ADJ 506

Hon'ble Judges : Akhtar Husain Khan, J

Bench : Single Bench

Advocate : H.N. Singh, Arun Kumar Singh and Vineet Kumar Singh, Advocates for the Appellant; Sunil Kumar Singh and Samir Kumar Pandey, Advocates for the Respondent

Judgement

Akhtar Husain Khan, J.—Learned counsel for the revisionists appeared. Learned AGA appeared for opposite party Nos. 1 and 2. Sri Sunil Kumar Singh appeared for respondent No. 3, complainant Dilshad.

Short counter-affidavit filed today by learned counsel for the opposite party No. 3 is taken on record.

Learned counsel for the parties submitted that they are ready to make final arguments. Revision should be disposed off finally at this stage.

Heard learned counsel for the parties and perused impugned order.

Present revision has been filed by revisionists, Shahzad, Taj Mohammad, Ikrar and Smt. Bano against order dated 20.10.2014 passed by Additional Sessions Judge, Court No. 9, Ghaziabad in Sessions Trial No. 2058 of 2012 (State v. Shahzad and others), Case Crime No. 254 of 2012, under Section 306 I.P.C., P.S. Bhojpur, District Ghaziabad whereby learned Additional Sessions Judge has passed order that the court in exercise of its power under Section 193 Cr.P.C.; do hereby take cognizance of offence punishable under Section 376(2)(g) of I.P.C.

against accused persons Shahzad, Taj Mohd. And Ikrar and of offence punishable under Section 420 I.P.C. against accused Shahzad and of offence punishable under Section 506(II) I.P.C. against accused Taj Mohd. and of offence punishable under Section 420 I.P.C. and 306 I.P.C. against Smt. Bano.

2. By aforesaid impugned order dated 20.10.2014, learned Additional Sessions Judge has cancelled bail of accused-revisionist Shahzad and has further ordered to issue non-bailable warrants against revisionists Shahzad, Taj Mohd., Ikrar and Smt. Bano.

3. Learned counsel for the revisionists contended that impugned order passed by learned Additional Sessions Judge is against law and without jurisdiction.

4. Learned AGA as well as learned counsel for opposite party No. 3, complainant supported impugned order passed by learned Magistrate.

5. I have considered the submissions made by learned counsel for the parties.

Learned Additional Sessions Judge has passed impugned order dated 20.10.2014 under heading "Order under Section 193 Cr.P.C. operative portion of this order also shows that learned Additional Sessions Judge has taken cognizance under Section 193 Cr.P.C.

In view of above, first of all, it appears relevant to go through the provisions of Section 193 Cr.P.C. For ready reference Section 193 Cr.P.C. is reproduced below:

"193. Cognizance of offences by Courts of Session

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code"

Reading of Section 193 Cr.P.C. shows that it provides a bar on power of Sessions Court to take cognizance of offence as a court of original jurisdiction unless the case is committed to it by Magistrate under provisions of Criminal Procedure Code.

Reading of Section 193 Cr.P.C., shows that it does not enable a Sessions Court to summon a person as accused who has not already been sent as an accused. In this context relevant provision is Section 319 of Cr.P.C. For ready reference Section 319(1) Cr.P.C. is reproduced below:

"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 person 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."

Reading of Section 319(1) Cr.P.C. makes it clear that where, in the course of trial of an offence, it appears from the evidence that any person 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.

Thus, it is apparent that the Court has power to summon a person as an accused under Section 319 Cr.P.C., who has not already been sent as an accused. In the case of Ranjit Singh Vs. State of Punjab, Hon"ble Apex Court has held that:

"24. For the foregoing reasons we find it difficult to support the observations in Kishun Singh's case that powers of the Sessions Court Under Section 193 of the Code to take cognizance of the offence would include the summoning of the person or persons whose complicity in the commission of the trial can prima facie be gathered from the materials available on record.

25. In the result we set aside the impugned order of the Sessions Court adding the appellant as an accused in the case. However, we make it clear that we do so without prejudice to the powers of Sessions Court to add any person in the array of the accused Under Section 319 of the Code."

In view of above pronouncement of Hon"ble Apex Court rendered in the case of Ranjeet Singh v. State of Punjab as well as provisions of Section 193 Cr.P.C. and Section 319 Cr.P.C., it is apparent that Sessions Court after having taken cognizance after committal order of Magistrate may summon a person as an accused not already sent as an accused, under Section 319 Cr.P.C. on the basis of evidence already available on record.

In view of discussion made above, it is apparent that summoning of a person not already sent as an accused may be ordered under Section 319 Cr.P.C. only, therefore, the order passed by learned Additional Sessions Judge for summoning accused revisionists Taj Mohammad, Ikrar and Smt. Bano under Section 193 Cr.P.C. is against law.

6. Admittedly, police has submitted charge-sheet against accused-revisionists Shahzad in Crime No. 254 of 2012 for offence punishable under Section 306 I.P.C. whereupon Magistrate has taken cognizance and after compliance of Section 207 Cr.P.C. has committed the case to the Court of Session.

Thus, it is apparent that accused-revisionists Shahzad is an accused before Court, therefore in respect of accused revisionist Shahzad relevant provisions of Criminal Procedure Code are Sections 226, 227, 228 which are quoted below:

"226. Opening case for prosecution?

When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

227. Discharge--

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Comments: The order of discharge should be supported by reasons; Sunil Kumar Jha @ Bittu Jha and Others Vs. The State of Bihar,

228. Framing of charge--

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which?

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

7. In view of provisions of Sections 226, 227 and 228 Cr.P.C. it is open for trial court i.e. Court of Additional Sessions Judge to frame charge against accused-revisionist Shahzad in accordance with provisions of Section 226, 227 and 228 Cr.P.C. on the basis of evidence available on record. In view of discussion made above, I am of the view that the impugned order passed by learned Additional Sessions Judge under Section 193 Cr.P.C. is against law and learned Additional Sessions Judge has committed grave irregularity in exercise of his jurisdiction.

In view of discussion made above, I am of the view that impugned order passed by learned Additional Sessions Judge should be set aside and learned Additional Sessions Judge should be directed to pass fresh order in accordance with law keeping in view the provisions of Sections 193, 319, 226, 227 and 228 of Criminal Procedure Code.

In view of above, present revision is allowed and impugned order passed by learned Additional Sessions Judge is set aside with direction to pass fresh order in accordance with above provisions of Criminal Procedure Code.