
(2000) 06 MP CK 0027

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 647 of 2000

Shiv Prasad Tiwari and another

APPELLANT

Vs

Jagdish Prasad Patel and another

RESPONDENT

Date of Decision : 30-06-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 307, 319, 323, 325, 327
Penal Code, 1860 (IPC) — Section 34

Citation : (2001) ILR (MP) 1935 : (2001) 2 MPHT 319 : (2001) 2 MPLJ 634 :
(2001) 4 RCR(Criminal) 214

Hon'ble Judges : Mr. S.S. Saraf, J

Bench : Single Bench

Advocate : Shri S.L. Kochar, for the Appellant; Shri D.S. Thakur, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Saraf, J.

Heard.

This is a criminal revision u/s 397 read with Sections 401 and 482, Cr.P.C against the order dated 3-5-2000 passed by the IVth Additional Sessions Judge, Chhattarpur in Sessions Trial No. 256/99 allowing the application filed u/s 319, Cr.P.C. and thereby arraigning the petitioners in the array of accused.

The facts giving rise to this petition are these :--

Two persons namely Shankar Bharti and Nandu @ Nandkishorc were prosecuted for offence under Sections 341, 323, 325, 327 and 307 read with Section 34 of IPC on the basis of a report lodged by complainant Jagdish Prasad, the respondent No. 1 who has not yet been issued notice. During the examination of the complainant Jagdish Prasad in the Trial Court, he stated that the present petitioners along with the above two accused were also involved in the commission of above offence whereupon the learned prosecutor filed an

application u/s 319, Cr.P.C. for arraigning the petitioners as accused in the array of accused persons. The learned Judge by the impugned order dated 3-5-2000 allowed the application and ordered issuance of warrant of arrests against them. Being aggrieved by the said order dated 3-5-2000, the present petition has been filed.

The sole contention of the learned counsel for the petitioners is that the examination of the complainant Jagdish Prasad was not complete as he was not cross-examined and therefore it was not within the jurisdiction of the learned Judge to allow the application. The learned counsel appearing for the petitioners has placed reliance on a decision of Calcutta High Court in Gulam Mondal Vs. Nazam Hossain and Others, , in which it has been held that the evidence recorded upto the stage of examination-in-chief is incomplete evidence and therefore on the basis of such evidence, the Court cannot act u/s 319, Cr.P.C.

Having given a thoughtful consideration to the contention raised by the learned counsel for the petitioner, I am unable to accept it. A perusal of the order of the Calcutta High Court in Gulam Mondal's case (supra) clearly indicates that there were other grounds also for rejecting the application by the learned Magistrate filed u/s 319, Cr.P.C. The learned Magistrate in that case rejected the application not only on the ground that the evidence was incomplete but also on the ground that the case was very old one and the trial should not be further delayed in the interest of justice.

Acareful scrutiny of the record in the present case reveals that there was none for the petitioners to cross-examine the complainant Jagdish Prasad on their behalf. The counsel appearing for the other two accused had no legal authority to cross-examine Jagdish Prasad on behalf of the petitioners. The complainant Jagdish Prasad, therefore, could not have been expected to be cross-examined on behalf of the petitioners before the impugned order was passed. In any case, the application was to be heard and disposed of without there being any cross-examination of the witness on behalf of the petitioners. It cannot, therefore, be expected that the application could not be considered on the basis of evidence recorded in examination-in-chief.

In recent pronouncement of the Supreme Court in Ranjit Singh Vs. State of Punjab, AIR 1998 SC 3148, it has been held that it is not necessary for the Court to wait until the entire evidence is collected for exercising the powers u/s 319, Cr.P.C.

Moreover, the Supreme Court in a recent judgment, Kammari Brahmaiah and Others Vs. Public Prosecutor, High Court of A.P., has held that Criminal Procedure Code is a procedural law and is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities.

In view of the above decisions of the Supreme Court in Ranjit Singh's case (supra) and Kammari Brahmaiah 's case (supra), with due respect, I am unable to accept the view expressed by the Calcutta High Court in Gulam Mondal's case

(supra). In the present case, not only the complainant Jagdish Prasad stated that the present petitioners also took active part in the commission of the alleged offence but it is also clear that the names of present petitioners were also mentioned by him in the FIR and the learned Judge has observed that in spite of their names being mentioned in the FIR, the investigating officer did not file charge-sheet against them. Under the circumstances, the finding recorded by the learned Judge does not appear to be erroneous. Since the statement of complainant Jagdish Prasad recorded in examination-in-chief was part of the statement of the complainant recorded during the trial, in my opinion it can be taken into account while exercising powers u/s 319, Cr.P.C. in view of above pronouncement of the Supreme Court in Ranjit Singh's case (supra) and Kammari Brahmaiah's case (supra).

In view of above, the impugned order is not grossly erroneous and therefore it cannot be said that it is not sustainable in law. The petition being devoid of any merits is, therefore, dismissed.

Criminal Revision dismissed.