

(2000) 01 AHC CK 0005

In the Allahabad High Court

Case No : Criminal Misc. Application No. 3072 and 3364 of 1997

Shiv Sahain Mishra Alias Raju and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 12-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319, 319(1), 482
Penal Code, 1860 (IPC) — Section 323, 325, 504, 506

Citation : (2000) CriLJ 2761

Hon'ble Judges : U.S. Tripathi, J

Bench : Single Bench

Advocate : Amit Saxena and P.N. Saksena, for the Appellant; Pankaj Rai, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

U.S. Tripathi, J.—The above two applications u/s 482 Cr.P.C. have been preferred for quashing of proceeding against the applicants on the basis of order dated 4-4-1997 passed in Criminal Case No. 512 of 1994, State v. Krishna Kumar and Ors., under Sections 323 325 504 and 506 I.P.C., P.S. Bakewar, district Fatehpur pending in the Court of Additional Chief Judicial Magistrate Fatehpur.

2. Smt. Bhagwani Devi opposite party No.2 in both the applications, lodged a report on 22-1-1994 at P.S. Bakewar district Fatehpur against the applicants of both the applications and four others with the allegation that on 21 -1 -1994 at about 6.00 P. M. while her son and daughter were milching cow, Krishna Kumar, Gokaran Nath, Raju armed with rifles along with Bhagwati Prasad, Dhannar, Rajan, Dileep, Vindoo, Krishna Devi, Mahesh, Girija Shankar, Uma Shankar, wife of Girija Shankar and Mukesh Kumar in all of 14 persons raided her house and started causing injuries to her son and daughter. They also fired from rifle and gun, set fire in her Chappar, damaged Chabootara and stoned at the house. They also caused injuries to animals and threatened them to remove from the village. The police registered a case at crime No. 10 of 1994, under Sections 323 325

504 and 506 I.P.C. After investigation the police submitted charge sheet only against four persons namely Krishna Kumar, Mahesh, Uma Shankar and Mukesh Kumar. During trial before the Magistrate Smt. Asha Devi daughter of opposite party No.2 was examined on oath. In her statement she named four persons against whom police had submitted charge sheet as well as the applicants, in all 14 persons, involved in the offence. Thereafter Smt. Bhagwani Devi opposite party No. 2 moved an application for summoning the applications u/s 319 Cr.P.C. on the ground that report was lodged against them also and they were also involved in the offence. The learned Magistrate found that there was sufficient ground for proceeding with against the applicants and therefore, he summoned them under Sections 323 325 504 and 506 I.P.C. in the exercise of power u/s 319 Cr.P.C. for trial alongwith other accused. The above summoning order has been sought to be quashed in these applications.

3. Heard learned counsel for the applicants in both the applications as well as the learned counsel for the opposite party No.2 and the learned A.G.A. and perused the record.

4. The summoning order u/s 319 Cr.P.C. has been challenged on the ground that the complainant and other witnesses have not named the applicants in their statement u/s 161 Cr.P.C. and police had submitted charge sheet only against four persons. The applicants Krishna Kumar and Mahesh, Narain were not present on the spot and were on their respective duty place on the date of occurrence and implication of applicants was false. The learned Magistrate had wrongly summoned them and that the summoning order was passed prior to completion of cross examination of Smt. Asha Devi P.W. 1 and therefore her statement could not be considered for the purpose of summoning the applicants.

5. Having considered the facts deposed in the affidavits and the submission of the learned counsel for the parties I found no force in the above contention.

6. Section 319 Cr.P.C. says that 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.

7. In the case of Joginder Singh and Another Vs. State of Punjab and Another, . It was held by Hon''ble Supreme Court that the expression any person not being the accused occurring in Section 319 Cr.P.C. clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the Criminal Court are included in the said expression. This view was repeated by the Hon''ble Supreme Court in another case of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, Therefore, it is clear that the Court may summon the persons who have

been dropped by the police if there is evidence.

8. In some cases like Dileep Singh v. State of 1996 (33) ALL.45 (Hindi Section) Surendra Kumar Sharma v. State of U.P. 1996 Cri.LJ 51 (Hindi Section) and Brij Pal Singh v. State of U.P. (1996) 33 All. Cri. C. Single Judge of this Court held that the summoning order u/s 319 Cr.P.C. cannot be passed before conclusion of the cross examination of the witness. But controversy was finally resolved in subsequent Division Bench case of Ram Gopal v. State of U.P. in Criminal Misc. Application No.1823 of 1995, decided on 12-10-1998 and reported in (1999) Cri LJ 123 : 1999 ALJ 539. The above single Judge cases were overruled and it was held that the term "EVIDENCE" as used in Section 319 Cr.P.C. does not mean an evidence completed by cross-examination and the Court can take action u/s 319 Cr.P.C. even on the statement made in examination-in-chief of one or more witness. Thus, it is clear that the cross-examination of the witness is not necessary for summoning the persons u/s 319 Cr.P.C. and only requirement is that there should be evidence before the Court regarding involvement of the person concerned. Moreover, in this case the cross-examination of Smt. Asha Devi (P.W.1) was also done.

9. The next contention of the learned counsel for the applicants was that applicants were not named by witnesses in their statement u/s 161 Cr.P.C. has no force as Smt. Asha Devi (P.W. 1) stated that she had named all the 14 persons, but the police did not mention their name. Moreover, the actual involvement of the applicants shall be decided by the Trial Court and the veracity and correctness of the evidence cannot be considered at this stage because only prima facie conclusion is to be drawn by the Court and it is not necessary to record a finding regarding the correctness of the statement of the witnesses.

10. The next contention of the learned counsel for the applicants was that two of the applicants namely Shiv Sahain Misra and Bhagwati Prasad were not present on the spot. The plea regarding alibi of these applicants shall be considered on merit as it has to be proved like other fact.

11. In view of the above discussion and observation I find that the summoning order u/s 319 Cr.P.C. is not liable to be quashed in this proceeding. The applications have no force and are liable to be rejected. Both the applications, Criminal Misc. Application No.3072 of 1997 Shiv Sahain Mishra, Mishra alias Raju v. State of U.P. and Criminal Misc. Application No. 3364 of 1997, Gokaran Nath Mishra v. State of U.P. are hereby rejected summarily. Stay orders dated 14-5-1997 are vacated.

12. Copy of this order be sent to C.J.M. Fatehpur.