
(1998) 09 AHC CK 0025
In the Allahabad High Court

Smt. Anand Kumari and Another	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 216, 244, 319
Penal Code, 1860 (IPC) — Section 147, 319, 323, 325, 336

Citation : (1998) 2 ACR 1561

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : P.N. Tripathi, for the Appellant; A.G.A., for the Respondent

Judgement

S.K. Phaujdar, J.—The matter was heard on 6.8.1998 and orders had been reserved, which is being pronounced today. There had been a direction on 6.8.1998 that till orders were recorded, further proceedings in Case Crime No. 1218 of 1996, pending before the C.J.M., Mirzapur, would remain stayed.

2. By an order of the C.J.M., Mirzapur, dated 7.1.1998, the present applicants were summoned for an offence u/s 380, I.P.C. in purported exercise of the powers of the Magistrate u/s 319, Cr. P.C. The aggrieved applicants moved a Criminal Revision No. 16 of 1998, before the Sessions Judge, Mirzapur, and the revision application was dismissed on 13.7.1998.

3. A complaint was filed by one Rajendra Kumar before the C.J.M., Mirzapur, for an offence u/s 379, I.P.C. on 8.4.1996 for an incident that allegedly took place on 21.3.1996. The complainant and his witnesses were examined under Sections 200 and 202, Cr. P.C. and upon those statements the Magistrate recorded an order dated 26.9.1996 u/s 203, Cr. P.C. dismissing the complaint against the present applicants, but one Om Prakash son of applicant No. 1 was summoned for an offence u/s 380, I.P.C. This order was not challenged at any point of time before any forum and, accordingly, the order attained finality. The trial against Om Prakash proceeded before the Court below and during the course of trial, statements of the witnesses were recorded u/s 244, Cr. P.C. At that stage, an

application was filed u/s 319, Cr. P.C. for summoning the accused-applicants on the basis of the statements made in Court and the Magistrate did record the order dated 7.1.1998 in exercise of his powers u/s 319, Cr. P.C. and he summoned the present two applicants. Only thereafter the revision application, as stated above, was preferred and was dismissed on 13.7.1998.

4. The order of the Magistrate, as confirmed by the Sessions Judge, was challenged mainly on two grounds. It was stated that the Magistrate, after discharging the present applicants at an earlier stage, would not have taken recourse to Section 319, Cr. P.C. as that power could be exercised against a person who was not an accused, while the present applicants were very much accused persons before the Court below, albeit discharged. It was also contended that the statements made by the witnesses u/s 244, Cr. P.C. were verbatim the same as were made under Sections 200 and 202, Cr. P.C. and when these very statements were once disbelieved or thought not sufficient for issuance of summons, the same would not have been acted upon at a subsequent stage.

5. So far the first point is concerned, the learned Counsel placed reliance on a decision of the Supreme Court in *Sohan Lal and others Vs. State of Rajasthan*, . Two Hon'ble Judges of the Supreme Court had before them a case in course of a criminal appeal against a judgment of the Rajasthan High Court. In that matter, one Shanti Lal had lodged a report before police against four persons for having pelted stones at his house causing damage and causing injuries to certain persons. Police submitted charge-sheet for offences u/s 147/323/325/336/427, I.P.C. and the Magistrate, after taking cognizance and after hearing the arguments, discharged two persons of all the charges levelled against them and directed framing of charge u/s 427, I.P.C. only against some others. Subsequently, the Assistant Public Prosecutor submitted an application for amendment of charge u/s 216, Cr. P.C. in view of the evidence that was led in the case. The Magistrate took fresh cognizance for offences u/s 147/427/336/323/325, I.P.C. not only against three persons standing trial, but also against the other two, who were discharged after hearing.

6. The Hon'ble Judges engaged themselves to the proper interpretation of Sections 216, 319 and 398, Cr. P.C. and were of the view that the discharge, as aforesaid, was not one u/s 203, Cr. P.C. The order of discharge could have been challenged in a revision and, if so challenged, it could not have been disposed of without hearing the person so discharged. It was observed that Section 319, Cr. P.C. could not have been taken recourse to circumvent the bar u/s 398, Cr. P.C.

7. The learned State Counsel relied on an earlier decision of the Supreme Court in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors* 1983 SCC 115. It also dealt with the power of the High Court u/s 482, Cr. P.C. read with Section 319, Cr. P.C. and it was held that this Section 319 was really an extraordinary power that was conferred on the Court and was to be used sparingly and if compelling reasons existed for taking cognizance against other persons against whom action had not been taken. The Supreme Court observed that if the

prosecution at any stage produced evidence which satisfied the Court that the other accused or those who have not been arrayed as accused, against whom proceedings had been quashed, had also committed the offence, the Court could take cognizance against them and try them along with the other accused. The Supreme Court observed that the mere fact that the proceedings had been quashed u/s 482, Cr. P.C. against some of the accused persons would not prevent the Court from exercising its discretion if it was fully satisfied that a case for taking cognizance against them had been made out on the additional evidence led before it.

8. The decision of the Supreme Court in the case of Municipal Corporation of Delhi (supra) was referred to in the latter judgment of the Supreme Court in the case of Sohan Lal (supra) and was not overruled. It was submitted, however, on behalf of the applicants that if at all there be any conflict between the two decisions of the Supreme Court given by Benches of equal strength, the decision of the latter Bench would be binding. Reliance on this point was placed on a Full Bench decision of the Allahabad High Court in the case of Gopal Krishna Indlev v. Vth Addl. District Judge, Kanpur and Ors., AIR 1981 All 300. On the question of binding nature of precedence, it is felt that the subsequent judgment of the Supreme Court, if at all it was in conflict with the earlier judgment, would be taken to be the law of the land. Thus, the judgment in Sohan Lal's case (supra) would have a binding effect as a precedent on the ratio enunciated therein. The facts of the case, however, must tilt the view of this Court in favour of the present applicants.

9. To recapitulate in brief, it may be indicated that after the complaint was filed by Respondent No. 2, the witnesses were examined and upon those statements only, the Court declined to proceed against Smt. Anand Kumari and Baby. The copies of the statements made before the Court during trial and those made before the Court under Sections 200 and 202, Cr. P.C. have been submitted before this Court to say that they were verbatim the same. If at one point of time, a particular evidence is not acted upon when the Court was to look only for a prima facie material, it may not be proper for the Court at a subsequent stage to record an order contrary to the earlier order on the basis of verbatim the same evidence. Even the case law relied upon by the State Counsel requires that the power u/s 319, Cr. P.C. should be sparingly used and that too for compelling reasons. Viewing from this angle and being aware of the fact that the records are not before this Court and the complainant should also be heard in the matter, it is felt that the order of the Magistrate and the consequential order of the revisional court should be quashed and the matter should be sent down to the Court below to see and compare if the two sets of statements made under Sections 200 and 202, Cr. P.C. and during trial were same, so far the present two applicants are concerned. If so, then certainly it would not be a case of compelling reason for an action u/s 319, Cr. P.C.

10. In view of above, the application stands allowed. The orders of the

Magistrate and that of the Sessions Judge, dated 7.1.1998 and 13.7.1998 respectively, are quashed. The matter is sent back to the trial Judge, who will proceed according to the directions given above and if the statements made in the course of trial made the same allegations against the present two applicants as were made during the stage of Sections 200 and 202, Cr. P.C., the Magistrate will not exercise his powers u/s 319, Cr. P.C. for summoning the present two applicants.