courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 01/09/2026

(2011) 09 AHC CK 0417

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 2304 of 2006

Smt. Sidheshwari and Another — APPELLANT

Vs

State of U.P. and Another — RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 319, 482, 483
Penal Code, 1860 (IPC) — Section 149, 304

Citation : (2012) 1 ACR 1024

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Amarjeet Singh Rakhra, for the Appellant; Vimal Kishore Verma, for the Respondent

Judgement

Ashwani Kumar Singh, J.—Heard Sri Amarjeet Singh Rakhra, learned counsel for the petitioners, Sri Rajendra Kumar Dwivedi, learned A.G.A. and learned counsel for complainant/O.P. No. 2, Sri Vimal Kishore Verma. By means of this petition filed u/s 482, Cr. P.C. read with Section 483, Cr. P.C., learned counsel for the petitioners has prayed for quashing the impugned summoning order dated 21.7.2006, passed by the Additional Sessions Judge (Fast Track Court No. 3) Lakhimpur Kheri in Session Trial No. 718/2005 whereby the learned Sessions Judge has been pleased to summon the petitioners u/s 319. Cr. P.C. to face trial u/s 304/149, I.P.C.

2. For the sake of brevity and convenience, the facts of the prosecution case arising out of the F.I.R. is that on 14.12.2003, the son of the complainant was taken away by neighbours, Manish Gupta and Pappu Shukla (non-applicants). Thereafter, the complainant''s son did not come back and ultimately on 17.12.2003 his dead body was found by the police. It is also mentioned in the F.I.R. that about two years ago, in similar way, when the complainant''s son was being taken away by the aforesaid two persons, the complainant with the help of other persons intercepted them and somehow could save the life of his son.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/smt-sidheshwari-and-another-…

Learned counsel submits that during investigation the complicity of the petitioners was not found, as such, no charge-sheet was filed against them. The complainant in his statement adduced in the Court, in examination-in-chief reiterated the allegations made in the F.I.R. Thus, the petitioners have been summoned u/s 319, Cr. P.C.

3. Learned counsel submits that the Hon''ble Apex Court has laid down guidelines in various judgments for summoning the accused u/s 319, Cr. P.C. The Hon''ble Apex Court has cautioned the trial court to use the extraordinary powers, conferred u/s 319, Cr. P.C., very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. The Hon''ble Apex Court has also made clear that the intention of the provision u/s 319, Cr. P.C. is that where in the course of any enquiry into, or trial of, an offence, it appears to the Court from the evidence that any person not being the accused has committed any offence, the Court may proceed against him for the offence which he appears to have committed. Learned counsel submits that Hon''ble Apex Court has also expressed concern that unless the Court is hopeful that there is a reasonable prospect of the case as against the newly brought accused ending in being convicted of the offence concerned, the Court should refrain from adopting such course of action.

4. Learned counsel for the petitioners has relied upon the following cases of the Supreme Court :

(1) Michael Machado and another v. Central Bureau of Investigation and Another (2003) 3 SCC 262 : 2000 (1) ACR 747 (SC).

(2) Shashikant Singh Vs. Tarkeshwar Singh and Another, .

(3) Krishnappa Vs. State of Karnataka, .

(4) Guriya @ Tabassum Tauquir and Others Vs. State of Bihar and Another, .

5. Learned counsel submits that keeping in view the legal proposition laid down by the Hon''ble Apex Court u/s 319. Cr. P.C. learned court below has erred in evaluating the evidence of P.W. 1 Kishore Pandey. Learned counsel submits that the trial court while passing the summoning order u/s 319. Cr. P.C. has not at all given its anxious consideration to the law propounded by the Hon''ble Apex Court neither the Court has recorded any such satisfaction with regard to the evidence adduced which in all likelihood would lead to the conviction of the petitioners.

6. From perusal of the impugned order, it shows that all these relevant aspects of the legal proposition have not been considered by the trial court. Accordingly, the impugned summoning order dated 21.7.2006 passed by the Additional Sessions Judge (Fast Track Court No. 3) Lakhimpur Kheri in Session Trial No. 718/2005 is hereby quashed. The petition filed u/s 482 read with Section 483, Cr. P.C. is hereby allowed. The stay order, if any, is vacated. The learned trial court may proceed with the trial. However, I direct that the matter needs to be considered by the trial court afresh, if prosecution witnesses come forward with sufficient

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/smt-sidheshwari-and-another-…

evidence which could lead to reveal complicity of the petitioners in the present crime, keeping in view the legal proposition laid down by the Hon''ble Apex Court u/s 319. Cr. P.C. The trial court would be at liberty to pass a fresh order u/s 319, Cr. P.C. in accordance with law.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/smt-sidheshwari-and-another-…