

(2008) 01 AHC CK 0255
In the Allahabad High Court
Case No : Criminal M.A. No. 27575 of 2007

Surendra and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319
Penal Code, 1860 (IPC) — Section 201, 302, 364

Citation : (2008) 2 ACR 1212

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Advocate : S.P.S. Raghav and Puneet Srivastava, for the Appellant; Ajay Kumar Singh, Vivek Kumar Singh and A.G.A., for the Respondent

Judgement

Amar Saran, J.—Heard Shri S.P.S. Raghav, learned senior counsel for the applicants, Shri Vivek Kumar Singh, learned Counsel for the complainant and learned Additional Government Advocate.

2. This application has been filed for quashing an order dated 7.11.2007 passed by the Additional Sessions Judge, Court No. 5, Muzaffar Nagar whereby the applicants have been summoned u/s 364/302/201, I.P.C. in exercise of powers u/s 319 of the Code of Criminal Procedure.

3. Basically the order has been challenged on the ground that after the kidnapping of the four years old boy Lakshya, only one accused person Shiv Kumar alias Sillu, nephew of the informant was made an accused in the F.I.R., which was lodged at case Crime No. 238 of 2005, u/s 364/302/201, I.P.C.

4. It is further stated that even in the Section 161, Cr. P.C., statement, the name of the applicants was not disclosed and my attention was drawn to the statement of Inspector of the C.B.C.I.D., who was of the opinion that there was no sufficient evidence for connecting the applicants with the offence and hence he had decided not to submit a charge sheet against the applicants.

5. Learned Counsel for the complainant on the other hand submitted that there was sufficient evidence against the applicants and if the police for some ulterior reasons chooses not to record the statements of the witnesses faithfully, which are given u/s 161, Cr. P.C., that is not a ground for failing to place reliance on the evidence of the witnesses, P.W. 1, Surendra Singh, the complainant, P.W. 2, Radhey Shyam and P.W. 3 Monu, when they depose about the complicity of the applicants in Court.

6. My attention was also drawn to the evidence of P.W. 1, wherein he has specifically stated that after the arrest of Shiv Kumar 20 days after the incident, when the informant Surendra Singh, Om Prakash, informant's son Man Singh and Shiv Kumar's father was present, Shiv Kumar disclosed that the applicants had snatched the child from his custody and the child had never been recovered thereafter. Regarding the fact of snatching of the child by the applicants, he had learnt this fact after lodging the report. Thereafter, he disclosed this fact to the Investigating Officer, who however, did nothing on his disclosure and he was not satisfied with the investigation conducted by the police in this case.

7. P.Ws. 2 and 3 also similarly disclosed about the snatching of the boy from Shiv Kumar by the applicants.

8. In this view of the matter, it cannot be said that no prima facie case is disclosed. Whether the accused will be eventually acquitted at the conclusion of the trial is not to be considered at this stage, but it is only to be seen that a prima facie case is disclosed against the accused when an application u/s 319, Cr. P.C. is made for making some persons, who were earlier not the accused as accused in a case. There is also no reason, why the applicants are being falsely implicated in the offence when they have no hands in this crime.

9. In this view of the matter, I find no illegality in the order of the Court below summoning the applicants in exercise of powers under Sections 319, Cr. P.C.

The application is accordingly rejected.