

Vadde Veeresh and Another Vs. the State of A.P.

Vadde Veeresh and Another Vs. the State of A.P.

SooperKanoon Citation : sooperkanoon.com/1030263

Court : Andhra Pradesh

Decided On : Mar-25-2013

Judge : Hon'Ble Sri Justice R.Kantha Rao

Appellant : Vadde Veeresh and Another

Respondent : The State of A.P.

Advocate for Def. : Sri. T.Pradyumna Kumar Reddy Counsel, Sri. V.L.Surendra, Sri. O.Kailasnath Reddy Counsel, Sri. H.Prahalad Reddy

Judgement :

HON'BLE SRI JUSTICE R.KANTHA RAO CRIMINAL PETITION NO.74 OF 201.25.03.2013 Vadde Veeresh and another The State of A.P. Counsel for the petitioners: Sri T.Pradyumna Kumar Reddy Counsel for respondents 3, 5 to 7, 9 to 11,13 to 16, 18, 19, 37, 39 and 41: Sri V.L.Surendra, Counsel for the respondents 8, 20, 22, 26, 29, 35, 36, 38, 43 & 44: Sri O.Kailasnath Reddy Counsel for the respondents 12, 17, 24

27. 28, 30 to 34, 40 and 42: Sri H.Prahalad Reddy, Counsel for the Respondent No.1: Public Prosecutor representing the State HEAD NOTE: ?Cases referred:

1. 2002)5 SCC 73.ORDER: This criminal petition is filed under Section 482 of the Code of Criminal Procedure by the Accused Nos.23 and 41 in Sessions Case No.63 of 2009 on the file of the II Additional Sessions Judge, Kurnool at Adoni to direct the learned Additional Sessions Judge to proceed with the trial without

conducting de nova trial and dispose of the case.

2. I have heard Sri T.Pradyumna Kumar Reddy, learned counsel appearing for the petitioners, Sri O.Kailashnath Reddy, Sri M.Prabhakar Reddy, Sri V.Ramanjaneyulu and the learned Public Prosecutor representing the State.

3. The brief facts leading to filing of the present petition are the following: In the ghostly incident occurred on 17.05.2008, eleven persons were murdered and charge sheet was filed against A1 to A46 deleting the names of A1- Kotla Hari Chakrapani Reddy and A2- Cherukulapadu Narayana Reddy named in the F.I.R. The trial of the case was proceeded against the accused, who were charge sheeted for the charges under Sections 147, 148, 324, 326, 307, 302 read with 149 of IPC, Section 3, 4 and 6 of the Explosive Substances Act and Section 25(B) and 27 of the Arms Act. The trial was commenced on 23.03.2010, whereat the prosecution examined 41 witnesses, marked 100 documents and 116 material objects. The trial was concluded on 09.05.2012. The case was posted for examination of the accused under Section 313 of Cr.P.C on 04.06.2012. At that stage, the learned trial Judge considering the evidence available on record summoned A1 and A2, who are newly added accused in exercise of powers under Section 319 of the Code of Criminal Procedure on the ground that the accused involved in the commission of offence, the learned Judge suo moto took cognizance of certain offences against them.

4. Newly added accused, who were originally arrayed as A1 and A2 in the first information report filed Criminal Revision Case No.960 of 2012 and Criminal Revision Case No.1137 of 2012 assailing the order passed by the trial Court for proposing them to be added as accused in the Sessions Case. Learned Single Judge of this Court dismissed both the revision cases. Subsequently, the State filed Crl.M.P.No.264 of 2012 in S.C.No.63 of 2009 under Section 319 read with 273 of the Code of Criminal Procedure to split up the case against the newly added accused and the said petition was allowed by the trial Court. Thereafter, A1 and A5 filed Crl.R.C.No.2227 of 2012 challenging the order dated 31.10.2012 passed in Crl.M.P.No. 264 of 2012 in Sessions Case No.63 of 2009 by the Second Additional Sessions Judge, Kurnool at Adoni under which the newly added

accused were ordered to be tried separately. Learned Single Judge of this Court by his order dated 09.11.2012 set aside the order passed by the trial Court and directed to try the petitioners along with the other accused taking the view that when new persons are added as accused, it is desirable to conduct the trial along with the other accused, who were already on record as no separate trial against them is contemplated under law. The learned Single Judge, however, proceeded on the premise that the criminal revision cases were filed by the newly added accused, but in fact the said criminal petition was filed by A1 and A5, who were not newly added accused. The fact however, remains that the learned Single Judge directed the de novo trial in the sessions case insofar as the newly added accused are concerned.

5. The question requires determination in the present criminal petition is whether a direction can be issued to the learned Second Additional Sessions Judge, Kurnool at Adoni to proceed with the trial in sessions case without conducting de novo trial and dispose of the sessions case? 6. Before addressing this issue, it would be appropriate to extract Section 319 of the Code of Criminal Procedure which is as under:

319. Power to proceed against other persons appearing to be guilty of offence. (1) 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. (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid. (3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed. (4) Where the Court proceeds against any person under sub- section (1), then- (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re- heard; (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

7. In SHASHIKANT SINGH v TARKESHWAR SINGH AND ANOHTER¹ the Apex Court had an occasion to explain the procedure to be followed when new persons were summoned as accused in Sessions case by the Sessions Judge. The Apex Court laid down the procedure to be followed in such an eventuality in the following terms. "When the accused was summoned under Section 319 of Cr.P.C., the Court would consider that such a person could be tried together with the accused, who is already before the Court facing the trial. The safe guard provided in respect of such person is that the proceedings right from the beginning have mandatorily to be commenced afresh and the witnesses reheard. In short, there has to be a de novo trial against him. The provision of de novo trial is mandatory. It vitally affects the rights of a person so brought before the Court. It would not be sufficient to only tender the witnesses for the cross examination of such a person. They have to be examined afresh for examination-in-chief and not only their presentation for the purpose of the cross examination of the newly added accused, is the mandate of Section 319(4). The words 'could be tried together with the accused' in Section 319(1), appear to be only directory. "Could be" cannot under these circumstances be held to be 'must be'. The provision cannot be interpreted to mean that since the trial in respect of a person who was before the court has concluded with the result that the newly added person cannot be tried together with the accused who was before the Court when order under Section 319(1) was passed." 8. According to the Apex Court, the mandate of the law of fresh trial is mandatory; whereas the mandate that newly added accused could be tried together with the accused is directory. The Apex Court further clarified that on the magistrate committing the case under Section 209 to the Court of Session, the bar of Section 193 is lifted thereby investing the Court of Session with complete and unfettered jurisdiction of Court of original jurisdiction to take cognizance of the offence which could include summoning of the person or persons whose complicity in the commission of crime can, prima facie, be gathered from the material on record.

9. In the instant case, the learned Additional Sessions Judge on being satisfied that the material on record disclosed complicity in the commission of offence by A1 and A2 in the first information report, summoned them in exercise of powers under Section 319(1) of the Code of Criminal Procedure. Therefore, the magistrate can

straight away take cognizance of the offence made out against the newly added accused.

10. As regards the procedure, the de novo trial as held by the Apex Court has to be conducted against the newly added accused only. It is stated in the petition that the learned Sessions Judge is proposing to frame charges against the newly added accused and according to the petitioners, the learned Sessions Judge is not supposed to frame charges against the newly added accused, and he has only to proceed with the trial.

11. As to this, I would like to state that framing of charge is part of trial before the Court of session in Chapter 18 of the Cr.P.C. Since the de novo trial is mandatory, the learned Sessions Judge has to necessarily frame charges and when there being no specific charges framed against the accused, it would not be possible for the learned Sessions Judge to proceed with the trial against them. In this context, I want to clarify that the de novo trial against the newly added accused would not in any way affect the trial which had already proceeded with against the remaining accused.

12. Nextly, though as per the judgment of the Apex Court above referred, the requirement under Sub-Section 4 of Section 319 regarding de novo trial of newly added accused is mandatory and the requirement under Sub-Section 1 of Section 319 that the newly added accused could be tried together with the accused is directory, since in the instant case, the learned trial Court has not given its verdict against the remaining accused, it has to simultaneously pronounce the judgment against the newly added accused along with the accused against whom, the trial has already been completed as it is essential to arrive at a comprehensive understanding of the entire evidence before the learned Sessions Judge to pass an effective judgment.

13. It is submitted by the learned counsel appearing for the petitioners that in CrI.R.C.No.2227 of 2012, while passing the order, the learned Single Judge was under a mistaken notion that the said criminal revision case was preferred by the newly added accused, but in fact, they are not newly added accused. Even if the petition is not filed by the newly added accused, there is no quarrel for the

preposition laid down by the learned Judge that the de novo trial has to take place against the newly added accused. Therefore, it makes no difference. The order passed by the learned Single Judge being appropriate laying down the correct procedure cannot be assailed by the petitioners.

14. In view of the foregoing discussion, the learned second Additional Sessions Judge, Kurnool at Adoni is directed to conduct de novo trial against the newly added accused as per the procedure contemplated in Chapter 18 of the Code of Criminal Procedure for trial before a Court of Session. The de novo trial would be only in respect of the newly added accused. After completing the de novo trial against the newly added accused, the learned Sessions Judge is directed to pronounce the judgment simultaneously against the accused, who were earlier tried and also the newly added accused. Since the direction issued in the criminal petition is in respect of procedure to be followed, I find no substance in the contention that each and every accused has to be afforded an opportunity before issuing the direction. The learned Sessions Judge is directed to complete the trial and pronounce the judgment within four months from the date of receipt of a copy of this order.

15. With the above direction, the criminal petition is dismissed.

_____ R.KANTHA RAO,J Dated:

25. 03.2013

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com