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Devendra Kumar Pal Vs. State Of U.p

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Court : Supreme Court of India

Decided On : Sep-06-2024

Judge : Hon'Ble Mr. Justice B.R. Gavai Hon'Ble Mr. Justice K.V. Viswanathan

Appeal No. : Crl.A. No.-003727-003727 - 2024

Appellant : Devendra Kumar Pal

Respondent : State Of U.p

Advocate for Pet/Ap. : PUNEET SINGH BINDRA __

Judgement :

NON-REPORTABLE 2024 INSC679IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL No.OF2024(Arising out of SLP(Crl.) No.6960 of 2021) DEVENDRA KUMAR PAL APPELLANT(S) VERSUS STATE OF U.P AND ANOTHER RESPONDENT(S)

JUDGMENT

B.R. Gavai, J.

1. Leave granted 2. The present appeal challenges the judgment and order dated 25th August 2021 passed by the learned Single Judge of the High Court of Judicature at Allahabad, vide which the petition filed by the present appellant challenging the order passed by the learned Additional Sessions Judge

(hereinafter referred to as learned Trial Judge) dated 21st March 2012 was dismissed.

3. The facts of the present case are not disputed.

4. The trial court proceeded with the trial in connection with the offence punishable under Section 302 of the Indian 1 Penal Code, 1860 (for short IPC).

5. After the conclusion of the trial, the learned Trial Judge convicted some of the accused and acquitted the others.

6. The learned Trial Judge was also of the opinion that the present appellant was also required to be tried.

7. By an order dated 21st March 2012, the learned Trial Judge in the first half recorded the order of conviction in respect of the accused whom it had found to be guilty and also recorded the order of acquittal for the remaining accused, it found to be not guilty. Post lunch, the learned Trial Judge first recorded the order of sentence insofar as the accused who were convicted. Thereafter, the learned trial Judge had passed an order summoning the present appellant, Devendra Kumar Pal for trial by invoking powers under Section 319 of the Code of Criminal Procedure, 1973 (for short, Cr.P.C.) 8. We have heard Mr. Puneet Singh Bindra, learned counsel appearing for the appellant and Mr. Vishnu Shankar Jain, learned counsel appearing for the respondent-State.

9. Shri Bindra, learned counsel submits that in the case of 2 Sukhpal Singh Khaira vs. State of Punjab1, the matter was referred to the Constitution Bench for deciding the question as to whether the Trial Court had power under Section 319 of Cr.P.C. for summoning an additional accused when the trial with respect to other co-accused has ended and the judgment of conviction and sentence was rendered before summoning the additional accused. Relying on the same, he submits that, since in the present case also, first the order of conviction and sentence was recorded and only thereafter an order under Section 319 of Cr.P.C. was passed, the same would not be sustainable in law.

10. Shri Jain, learned counsel, on the contrary, submits that the Constitution Bench has held that if the judgment of the conviction and sentence and the order of summoning under Section 319 of Cr.P.C. are passed on the same date, the Court may have to examine the facts and circumstances of the case. He submits that in the present case, the order of sentence and the order under Section 319 of Cr.P.C. are passed by the learned Trial Judge in the same breath and, therefore, no error could be found with the same. 1 (2023) 1 SCC289:

2022. INSC12523 11. The issue is no more res integra.

12. It will be relevant to refer to paragraph 33 of the judgment passed by the Constitution Bench of this Court in the case of Sukhpal Singh Khaira (supra), which reads thus: 33. For all the reasons stated above, we answer the questions referred as hereunder:- I. Whether the trial court has the power under Section 319 of Cr PC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?. The power under Section 319 of Cr PC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable. II. Whether the trial court has the power under Section 319 of the Cr PC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated 4 from the main trial?. The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised

in the main trial till its conclusion. III. What are the guidelines that the competent court must follow while exercising power under Section 319 Cr PC?. (i) If the competent court finds evidence or if application under Section 319 of Cr PC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage. (ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon. (iii) If the decision of the court is to exercise the power under Section 319 of Cr PC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case. (iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the 5 Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately. (v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused. (vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with. (vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case. (viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of Cr PC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial. (ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of Cr PC, the appropriate course for the court is 6 to set it down for re-hearing. (x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly. (xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held. (xii) If, in that circumstance, the decision is to hold a

separate trial in case of the summoned accused as indicated earlier; (a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused. (b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

13. Indisputably, in the present case, on 21st March 2012, the order of conviction in the case of some of the accused and the order of acquittal in the case of the other accused was passed in the first half of the day. In the second half, the Court first passed an order for sentencing of the persons who were convicted and only thereafter passed an order under 7 Section 319 of Cr.P.C. for summoning the present appellant.

14. The Constitution Bench has clearly held that if such a summoning order is passed, either after the order of acquittal or imposing of sentence in the conviction, the same may not be sustainable.

15. Sitting in a two-judge combination, we are bound by the law laid down by the Constitution Bench of this Court.

16. As a result, the appeal is allowed. The impugned judgment and order dated 25th August 2021 passed by the learned Single Judge of the High Court, so also the order of summoning passed by the learned Trial Judge dated 21st March 2012 in respect of the present appellant under Section 319 of Cr.P.C. are quashed and set aside.

17. Pending application(s), if any, stand(s) disposed of. .....J.

(B.R. GAVAI) .....J.

(K.V. VISWANATHAN) NEW DELHI; SEPTEMBER06 2024. 8

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