

**The State of Karnataka Vs. Krishnappa**

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**Court :** Karnataka

**Decided On :** Feb-27-2004

**Reported in :** 2004CriLJ2175; ILR2004KAR1969; 2004(7)KarLJ66

**Judge :** K. Ramanna, J.

**Acts :** Indian Penal Code (IPC) - Sections 109 and 120B; Code of Criminal Procedure (CrPC) - Sections 216 and 319

**Appeal No. :** Cri. R.P. No. 554/2000

**Appellant :** The State of Karnataka

**Respondent :** Krishnappa

**Advocate for Def. :** B.R. Nanjundiah, Sr. Adv. for ;B.N. Maheswara, Adv.

**Advocate for Pet/Ap. :** S.G. Rajendra Reddy, Adv.

**Disposition :** Revision petition allowed

**Judgement :**

ORDER

**K. Ramanna, J.**

1. This revision is directed against the order dated 5.2.2000 passed by the Addl.Civil Judge (Jr.Dn.) and II Addl.JMFC., Ranebennur, in C.C.No. 610/93

whereby the Trial Court has rejected the application filed for summoning the respondent-accused by the State under Sections 319 and 216 Cr.P.C. Assailing the order of rejection of the said application the State has preferred this revision petition.

2. The learned High Court Govt.Pleader submitted that the Court below ought to have allowed the application filed by the prosecution under Sections 319 and 216 Cr.P.C. Even if the name of respondent-I was ordered to be deleted prior to the framing of the charge does not itself bar from entertaining the application under Section 319 Cr.P.C. to include him as one of the accused. But the Trial Court rejected the application on the contrary to the evidence of the prosecution. Almost all the 17 witnesses, examined in this case, have consistently and cogently deposed before the Court about the complicity of the respondent accused in instigating the accused Nos. 2 to 13 to commit the offence alleged. At the instigation of this respondent the accused cut the beetle leaves plants and coconut trees belonging to the complainant. In fact the respondent is the main accused and consequently there was conspiracy in hatching to commit the offence. Of course some of the prosecution witnesses are blood relatives. On that count it is not proper to discard their evidence and reject the application filed by the prosecution. Hence the State has preferred this revision.

3. The brief facts of this case are that, on 1.1.1993 between 7 a.m. and 12 noon this respondent as well as accused Nos. 2 to 13 formed themselves into an unlawful assembly and in prosecution of common object picked up quarrel with the complainant and damaged his standing crops on the ground of dispute about the said land. In furtherance of their common object they have caused damage to the crop of P.W. 1 and committed rioting. Further they have assaulted P.W.10, P.W. 11 and P.W.12 with hands causing simple injuries and abused them in filthy language thereby gave a provocation to them and also threatened C.W.1 and other prosecution witnesses namely C.Ws. 10, 11, 12, and C.Ws. 4 to 7 with intention to cause threat to their lives and committed mischief by destroying areca nut and beetle leaf plants by trespassing the land R.S.Nos. 98/1 and 98/2 of Hullatti village which was in possession of the C.W.1 and assaulted C.W. 4 Premavva with hands. Accordingly a case in Crime No. 64/93 was registered and

the allegations made against the respondent is that he has made a criminal conspiracy and instigated other accused to damage the standing coconut trees and beetle leaf and areca nut plants in R.S.Nos. 98/1 and 98/2. Therefore, after completion of the investigation a charge sheet came to be filed against the respondent and other 12 accused persons and this respondent has been arrayed as accused -1.

4. After taking cognizance the learned Magistrate issued summons to the other respondents including other accused and the respondent has challenged the same before this Court in CrI.P.188/95 under Section 482 Cr P.C. to quash the proceedings initiated against him. After hearing both parties this Court by its order dated 4.12.1995 quashed the complaint and registration of case in C. C.610 /93 on the file of I Addl. JMFC., Ranebennur, with liberty to continue the proceedings as against the other accused and decide the case in accordance with law.

5. After framing the charge against the accused --2 to 13 the prosecution examined in all 17 witnesses and after recording the statement under Section 313 Cr.P.C. the case was posted for arguments of both parties. The public prosecutor filed an application under Sections 319 and 216 Cr.P.C. to issue summons to the respondent herein which came to be rejected. Accordingly, the State has come up with this revision.

6. Heard the arguments of the learned High Court Govt.Pleader and Sri B.R. Nanjundaiah, Senior Advocate, for respondent, and perused the records.

7. The learned High Court Govt. Pleader submitted that the evidence of the prosecution witnesses clearly indicates that on the date of the incident that this respondent being Assistant Commandant, Third Battalion, K.S.R.P. Koramangala, instigated the accused-2 to 13 and hatched a criminal conspiracy and directed the other accused persons to cause damage to the arecanut plants, beetle leaves plants and coconut trees grown by the complainant C.W.1 in his land bearing R.S.No. 98/ 1 and 98/2. Therefore, the evidence placed through the prosecution witnesses clearly indicates that there is prima facie case to summon the respondent to face the trial for the offence punishable under Sections 120B and 109 IPC. Further it is submitted that Section 319 Cr.P.C. empowers the Court to

summon any person as accused at any stage of the case. Therefore, even though the case was posted for arguments of both parties the Addl.Public Prosecutor rightly filed an application under Sections 319 and 216 Cr.P.C. to summon this respondent. The allegation made in the Kl.R. discloses that when this respondent is mainly responsible for the commission of the offence therefore rejection of the application filed by the State under Sections 319 and 216 Cr.P.C. is illegal and incorrect. Quashing of initiation of criminal proceeding against the respondent is not a ground to reject the application filed by the State. Of course some of the witnesses might not have supported the case of the prosecution that does not mean that the evidence placed on record by the prosecution this respondent has not instigated the other accused persons to destroy the standing arecanut trees and beetle leaf plants by trespassing into the land of complainant.

8. On the other hand the learned Senior Advocate Sri B.R.Nanjundaiah submitted that this respondent though arrayed as accused-1 by the complainant and this respondent challenged the initiation of the criminal proceedings against him CrI.P.188/95, after considering the statement of the prosecution witnesses recorded under Section 161 Cr.P.C. this Court has allowed the criminal petition by setting aside the initiation of criminal proceedings against the respondent. Therefore, the question of filing an application to summon this respondent is neither necessary nor proper to face the trial for the offence punishable under Section 120B or 109 Cr.P.C. Therefore the Trial Court has rightly dismissed the application filed by the State in summoning the respondent.

9. I have carefully gone through the order under challenge. It is not disputed that the respondent is a senior officer in the police department and the complaint came to be registered against the respondent and other 12 accused persons for the aforesaid offence. In order to appreciate the contention of both parties it is just and proper to cull out Section 319 Cr.P.C.:

'319. Power to proceed against other persons appearing to be guilty to 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.'

10. The learned Counsel for the respondent very much emphasised the words 'that any person not being an accused' mentioned in Section 319 Cr.P.C. The evidence placed on record by the Prosecution through its witnesses namely P.Ws.1, 4, 6, 9, 10, 11 and 13 indicate some prima facie case, that on the date of the incident this respondent instigated other accused persons to destroy arecanut trees and beetle leaf plants standing in survey No. R.S.98/1 and 98/2. The evidence placed on record discloses that the aforesaid witnesses have specifically deposed before the Court that the respondent was very much present in the said village and instigated the accused-2 to 13 to commit the offence which is a prima facie offence to summon him. Merely because he pleaded alibi, that on the date of the alleged incident he was not present in the village, 3 days prior to the alleged incident he had been to wife's house i.e., Beludi village of Harihara taluk as his wife gave birth to a child, is not sufficient proof. The respondent is required to appear before the Courts and then plead for alibi by cross examining the prosecution witnesses.

11. In the decision reported in the case of MUNICIPAL CORPORATION, DELHI v. RAMKISHEN ROHTAGI, 1983 Cr.L.J. 159 (SC) wherein the Apex Court held that even an accused against whom process has been issued and against whom proceedings have been quashed may be summoned under Section 319 Cr.P.C. Therefore, Section 319 is not a bar to summon the respondent at any stage of the case before pronouncement of the judgment. The evidence placed through the aforesaid witnesses show that there is prima facie case to summon the respondent even though his name finds a place in the FIR, complaint and charge sheet and even though the petition filed under Section 482 Cr.P.C. came to be allowed.

12. The evidence of P.W.4 and other witnesses prima facie indicates that the respondent had committed the offence punishable under Section 120B and 109 Cr.P.C. by instigating the other accused to commit the offence to damage the arecanut plantations and coconut trees standing in survey No. R.S.98/1 and 98/2.

13. In the decision reported in the case of SRI MAHANT AMAR NATH v. HARYANA, 1983 Cr.L.J. 433(SC) wherein the Apex Court held that where the names of persons mentioned in the statement made under Section 161 Cr.P.C. and yet they had not been charge sheeted, the Court can implead such persons on an application by the approver after taking evidence of one eye-witness. Whereas, in the instant case after framing charge against accused-2 to 13 the prosecution has examined in all 17 witnesses out of them P.Ws.1, 4, 6, 9 and 13 deposed before the Court about the presence of this respondent on the date of the incident and about the instigation made by him to the other accused persons to destroy the crops and trees grown by P.W.1 in R.S.No. 98/1 and 98/2.

14. Considering the prima facie evidence placed on record and keeping in mind the aforesaid decisions it could be said that the Trial Court has wrongly recorded its finding. Therefore, the finding recorded by the Trial Court is incorrect and is liable to be set aside.

15. Accordingly it is set aside and the revision petition is allowed.

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