A. Vasanth Kumar and anr. Vs. the State of Karnataka

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Court : Karnataka

Decided On : Dec-19-2003

Reported in : 2004CriLJ1958; ILR2004KAR358

Judge : K. Ramanna, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 319, 319(1) and 468

Appeal No. : Cr. R.P. No. 239/2000

Appellant : A. Vasanth Kumar and anr.

Respondent : The State of Karnataka

Advocate for Def. : P.M. Nawaz, HCGP

Advocate for Pet/Ap. : Chandrakala, Adv. for ;Shivakumar Kalloor, Adv.

Disposition : Revision petition dismissed

Judgement :
ORDER

K. Ramanna, J.

1. This revision is directed against the order dated 14.3.2000 passed by the Addl. J.M.F.C. III Court, Raichur in C.C.No. 779/98, whereby the Court below allowed the application filed by the complainant through prosecutor under Section 319

Cr.P.C. The cognizance of the offences against these revision petitioners (Proposed Accused Nos. 9 & 10) have been taken and summons were issued. Therefore, feeling aggrieved by the order that the charge sheet filed about three years back and the charge sheet does not disclose involvement of the revision petitioners - proposed accused in the commission of the alleged offences. After recording the evidence of 7 witnesses, the complainant party with a sole intention to harass them had filed an application through A.P.P. to issue summons, which is contrary to the settled law. There is no consistent evidence on the alleged evidence to show a prima facie case to summon them.

2. Heard the arguments of Ms. Chandrakala for revision petitioner and the learned High Court Government Pleader for respondent and perused the records.

3. It is an admitted fact that the law was set in motion on the basis of the complaint lodged by P.W. 1 against accused 1 to 8 and others for an offence punishable under Section 147, 504, 506, 323, 324 R/ w 149 IPC. Though the complaint was filed against 8 accused and other persons, actually the charge sheet has been filed only against 8 accused persons. So after framing the charges against 8 accused persons, the evidence of 7 witnesses including the complainant and the injured persons was recorded. The application under Section 319 Cr.P.C. came to be filed. So after considering the evidence of P.W. 1, 3, 4 and 7, the Trial Court allowed the application and issued summons.

4. In this behalf, Ms. Chandrakala learned Counsel for the revision petitioner vehemently argued that there is no limitation as such in summoning the proposed revision petitioner/accused by the Court and the charge sheet has been filed long back, cognizance has been taken against the other accused persons about 3 years back and after recording the evidence of 7 witnesses by the Trial Court, allowed the application filed by the respondent/complainant at a belated stage. Therefore, the provisions of Section 468 of Cr.P.C. are very much applicable to the facts of the case on hand. As against this, learned Counsel for the revision petitioner relied on a decision reported in SRINIVAS GOPAL v. UNION TERRITORY OF A.P, UJ (SC) 1988(2). wherein Division Bench of Apex Court has held that 'Delay - Investigation started in November 1976; completed in September

1977 and cognizance offence taken on March 1986 Delay of 91/2 years not explained - Held, trial not to proceed further'. In the aforesaid case, the appellant S. Gopal was charge sheeted for an offence punishable under Section 279, 338 and 304-A of IPC, but there was a delay of 91/2 years in taking cognizance of the offence. Whereas, in the instant case, there is no delay as such, in taking cognizance of the offence against Accused Nos. 1 to 8 but the Court has taken cognizance of the case against revision petitioners/ proposed accused and after considering prima facie evidence of P.Ws 1 to 7. Therefore, the contention of the learned Counsel for the revision petitioner that the provisions of Section 468 of Cr.P.C. cannot be made applicable to the facts of this case on hand. Accordingly, the contention of the learned Counsel for the revision petitioner is not accepted. The other contention put forth by the counsel for the revision petitioner is that the names of the revision petitioners/ proposed accused does not find place in the FIR and that after investigation, no charge sheet was filed against them, therefore, filing of application subsequently under Section 319 Cr.P.C. at the instance of the complainant is not at all maintainable. In support of this contention, learned Counsel for the revision petitioners relied on a decision reported in case of MAHESH CHANDRA MISRA AND ORS. v. STATE OF U.P. AND ORS., 1999 CRL.L.J. 315 wherein Allahabad High Court has held that 'summoning of accused passed on the basis of examination-in-chief alone - Persons summoned were named in FIR but after investigation no charge - sheet was filed against them - They were not guilty of offence and were being falsely implicated -Complainant, on whose evidence summons is being issued was not an eye-witness as he claims - He was found to be instigator of crime and was involved in number of criminal cases - Issuing process for summoning accused on basis of his examination - in chief alone -Grossly erroneously'. Whereas, in the instant case, the records indicates that complaint filed against the revision petitioner No. 1 and other 20 accused persons, but he has not been sent up for trial. The record also discloses that P.Ws. 1 to 7 were cross-examined by the accused persons. Therefore, the ratio laid down by the Allahabad High Court is applicable to the facts of the case on hand. The revision petitioner No. 1 is the main accused and the investigation agency has not filed the charge sheet against him for the reasons best known to them. Therefore, it could be said that the aforesaid decision is not at all applicable

to the facts of the case on hand. Further, learned Counsel for the revision petitioner contended that the Court should be very cautious in summoning such an accused person on the basis of the evidence of prosecution witnesses. In support of this contention, the revision petitioner has relied on a decision rendered by this Court reported in BALAPPA v. STATE OF KARNATAKA, 1985 (2) KLJ 583, 1982 (2) KLJ 305 wherein this Court has held that ' Section 319 Court when can proceed against the accused - evidence does not establish any offence - Power under Section 319 Cr.P.C. should be used sparingly when compelling reasons exists.' It has further held that' No doubt, it is open to the prosecution to produce evidence at any stage of the trial of a criminal case and satisfy the Court that any person not being the accused, has committed any offence for which such person could be tried together with the accused in such a case, the Court may be proceed against such person for the offence when he appears to have committed and try him along with the accused who were already before Court. That this power given to the Court is really an extraordinary power and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken and the Court proposed to take action only in the course of the trial of the accused, of course, on the basis of the evidence produced by the prosecution in the course of trial'. But, in the instant case, the evidence of prosecution witnesses namely P.Ws 1 to 7 discloses that some prima facie has been made out against the revision petitioners and the 1st revision petitioner's name finds a place in the F.I.R. and it is alleged that he played an important role in the alleged commission of offence and therefore, with due respect to my Brother Judge, it could be said that the ratio laid down in the aforesaid decision is not at all applicable to the facts of the present case on hand. Learned Counsel for the revision petitioner also relied upon another decision reported in AYYANAGOWDA v. STATE OF KARNATAKA AND ORS., 1982 (2) KLJ 305 wherein it has been held that 'where the accused was nowhere near the scene of occurrence, the mere facts that the unlawful assembly consisted mostly of his servants or tenants and that its common object was to do some thing which was in the interests of the accused, cannot lead to the conclusion that the accused must necessarily have ordered or instigated the information of this unlawful assembly or the commission of this crime'. But, in the instant case, the prosecution

witnesses namely, P.Ws. 1 to 7 have specifically deposed before the Trial Court on oath about the part played by these revision petitioners. It is clear from the evidence of P.W. 1 that on that day. Accused Nos. 1 to 8 and the revision petitioners being members of the Town Municipality together came to the house of Gokulappa apart from the, other three persons were also accompanied and this revision petitioner No. 1 instigated the other accused persons by saying P.W. 3 Subhash also deposed before the Court that A-1 to 8 before the Court as well as the revision petitioner No. 1 had been to his house and demolished the wall and assaulted his father. Therefore, the ratio laid down by this Court in the aforesaid decision is not at all applicable to the facts of the case. That apart, learned Counsel for the revision petitioner also relied on a decision reported in the case of BHASKAR v. STATE, REPRESENTED BY INSPECTOR OF POLICE , 2001 CRL.L.J. 3426 wherein it has been held that 'Section 319 - Arraignment of accused -Application for, filed at stage case was posted for examination of defence witness - During investigation evidence regarding involvement of proposal persons in crime was not found, so they were not included in charge sheet - No sufficient material to proceed against proposed accused persons and that case will end in their conviction - In circumstance order of Trial Court implicating and proceeding against proposed persons, without even issuing notice to them - Not proper and liable to be set aside'. She also relied upon another decision reported in K. SHANTHAMMA AND ORS. v. RAHMATH AND ANR. 2001 CRL.L.J. 3409 wherein it has been held that ' Section 319 -Arraignment as accused - Validity - Complaint by tenant that lock of their house was broken up and furniture and household articles thrown away their landlord- Trial commenced against two persons after investigation - In trial, complainant state that enquiries made by her revealed that petitioners were also involved in commission of offence -It was only hearsay evidence - No direct evidence led to show prima facie involvement of petitioners - No compelling reasons existed to arraigned them as accused in exercise of powers under Section 319 -- Order liable to be set aside'. She also relied upon another decision reported in AMIT KUMAR MATHUR v. STATE (U.T. CHANDIGARH), 1998 CRL.L.J. 607 wherein it has been held that ' Section 319 - Additional accused - Summoning of-complaint filed for offence of rash and negligent driving - During investigation it was found that another person and not

petitioner - accused was driving vehicle on date of incident - Evidence of complainant - injured and witnesses inconsistent - No material to proceed against petitioner - accused - Order summoning petitioner as an accused, not proper'. Considering the facts and circumstances of the case and that P.Ws. 1 to 7 have already examined and the name of the revision petitioner finds place in FIR, provisions of Section 468 of Cr.P.C. is not at all applicable to the facts of this case, because the charge sheet was filed about three years back and on the basis of the available material, the Trial Court took cognizance of the case and issued process against A-1 to 8. So, after framing of the charge and evidence against P.W.s 1 to 8 and after elaborate cross-examination, most of the witnesses examined by the prosecution discloses that the petitioners herein have also participated in the aforesaid offences. Therefore, it is proper to hold that the Trial Court has rightly recorded its finding. Under Section 319(1) of Cr.P.C. the Court has got power to implead an additional accused, only if it is found that he could be tried and found together with the other accused persons who are already arraigned. It is specifically made clear that it will be presumed that newly added person being an accused person when the Court took cognizance of the offence upon which the enquiry of the trial has commenced. This indicates that the Court is not empowered to take cognizance of any other offence, if an accused is impleaded by invoking under Section 319 IPC. Newly added accused should be tried only for the offences of which cognizance has already been taken against the accused persons. Therefore, the prosecution is at liberty to file such an application at any stage of the case to implead the other accused against whom a prima facie case has been made and the learned Magistrate has got powers under the said section to summon the proposed accused persons. The person against whom charge sheet has not been filed can be arrayed as accused persons in the exercise of powers under Section 319, some evidence or materials are brought on the record in course of inquiry or trial KISHORI SINGH v. STATE OF BIHAR., 2001 CRL.L.J. 123 (SC) The power exercisable under Section 319 is an extraordinary power conferred on the Court to do real justice, it should be used with caution and only if compelling reasons exist for proceedings against a person against whom action has not been taken in HRISIKESH PRADHAN v. STATE OF ORISSA., 1995 (4) CRIMES 684 The basic requirement for invoking Section 319 Cr.P.C. is that it

should appear to the Court from the evidence collected during trial or in the inquiry that some other person who is arraigned as an accused in the case has committed an offence of which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. The Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such an offence other persons could as well be tried along with the already arraigned as accused in MICHAEL MACHADO v. C.B.I., : 2000 CriLJ1706

5. On the other hand, the learned Government Pleader submitted that the State could file an application under Section 319 Cr.P.C. to summon the proposed accused persons at any stage of the case. Since the evidence of prosecution witnesses viz., P.Ws 1 to 7 discloses the prima facie case against them and therefore, the Trial Court allowed the application and issued summons and hence the order under revision does not call for any interference.

6. The evidence of P.W. 1, 3, 4 and 7 which discloses that at the time of alleged incident, the revision petitioner 1 & 2 accompanied accused No. 1 to 8 and said to have been instigated them to assault. Since the evidence placed on record by the prosecution discloses prima facie case i.e.., that the revision petitioners 1 and 2 instigated the other accused persons and therefore, the Trial Court has rightly issued summons to appear before the Court. It is for the revision petitioner to cross examine the witnesses on the point that the statement recorded by the police does not disclose their names at the time of the incident. Therefore, the Trial Court considering the prima facie evidence of P.W. 1, 3,4,& 7 has rightly issued summons to the revision petitioners.

7. Hence, I do not find any illegality or incorrectness in the finding recorded by the Trial Court. Even the Court can suo-moto summon to the proposed accused persons after perusing the statement of the prosecution witnesses and other material placed on record by the Investigating Officer. Whereas in the instant case, the complainant filed the petition under Section 319 Cr.P.C. through Prosecutor, which has been rightly considered by the Trial Court. Hence the revision petition

does not survive and devoid of any merit. Accordingly, it is dismissed.

8. It is made clear that the opinion expressed by me one way or the other with the sole intention to dispose of this revision petition will not come in the way of Trial Court to dispose of the case pending before it.