

Niranjan Lal and Others Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Sep-05-1997

Reported in : 1998(1)AWC192

Judge : S.K. Phaujdar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 1161, 93, 319, 319 (1) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 323 and 324

Appeal No. : Crl. Misc. Application No. 4924 of 1997

Appellant : Niranjan Lal and Others

Respondent : State of U.P. and Another

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Akhilesh Srivastava, Adv.

Judgement :

S.K. Phaujdar, J.

1. In this application under Section 482, Cr. P.C., the applicant has challenged an order dated 22.12.1993 passed by the IVth Judicial Magistrate, Aligarh, in Case No. 1984 of 1991, State V. Dharam Pal, under Sections 323 and 324, I.P.C. P. S. Madrak, District Aligarh. The aforesaid order was challenged in a Criminal

Revision No. 69 of 1994 before the Sessions Court and the Illrd Addl. Sessions Judge at Aligarh had dismissed the revision application by his order dated 23.9.1996.

2. It appears from the order impugned that initially the case was taken up against Dharam Pal and others and certain witnesses were examined at the trial stage. In their statements, the complicity of the present applicants in the alleged offence had transpired and the prosecution made a prayer for an action under Section 319, Cr. P.C. against the present applicants. The learned trial court considered the prayer and directed issuance of summons on the present applicants by his order dated 22.12.1993.

3. It was contended on behalf of the present applicants that a mere statement in examination-in-chief of the witnesses examined at the trial could not have been relied upon to record an order under Section 319, Cr. P.C. as the statements could not be covered under the word 'evidence' unless the same was tested by cross-examination. In addition to meeting this point with an argument that even a statement in examination-in-chief is 'evidence' so far Section 319, Cr. P.C. is concerned, the learned A. G. A. took up a further plea that when a revision application has been dismissed, a second revision application did not lie even under the garb of invoking the inherent powers under Section 482, Cr. P.C.

4. Section 319(1), Cr. P.C. is reproduced in toto so that the arguments of the parties, the reasonings that may be advanced by this Court and the case-laws that have been cited could be best appreciated ;

'319. Power to proceed against other persons appearing to be guilty of offence.--
(1) Where, in the course of any enquiry 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.'

5. The learned counsel for the State relied on the decision of the Supreme Court as in *Kisun Singh and others v. State of Bihar*, 1993 Cr LJ 1077. It was a case where the Sessions Court had directed issuance of summonses to such accused

persons who were not charge-sheeted and were not committed to it. It was a case where no evidence was led before the court and really the trial had not commenced. It was observed that as no evidence was led the power of summoning under Section 319, Cr. P.C. was not attracted. But the Supreme Court was of the view that the Sessions Court had every jurisdiction to summon an additional accused by invoking its powers under Section 193, Cr. P.C., as under the provisions of the Cr. P.C. of 1973 a case is committed to the Court of Sessions and not a particular accused and under Section 193 the Sessions Court is empowered to take cognizance upon commitment. The order impugned here has been recorded by a Magistrate for whom Section 193 is not at all applicable and some statement was made before him during trial and the question for determination is whether the statements amounted to evidence in the sense the term has been used in Section 319, Cr. P.C.

6. Another decision of the Supreme Court was referred to in this respect which stands in *Sri Mahant Amamath v. State of Haryana and another*, AIR 1983 SC 288. Here was a case where eye-witnesses, examined during a sessions trial, gave sufficient details about participation of four persons in the alleged crime. The Sessions Judge implicated the persons so named as accused and the order was challenged which reached the Supreme Court. The order was held legal. It was urged before the Supreme Court that although details were given by the witnesses regarding participation of the persons who were summoned as additional accused, such allegations had not figured in the statements of the witnesses under Section 161, Cr. P.C. and the Sessions Judge should not have been given the impugned directions under Section 319, Cr. P.C. The Supreme Court ruled out this argument indicating that this aspect clearly fell within the domain of appreciation of evidence to be done finally at the end of the trial before pronouncement upon the guilt or otherwise of the concerned accused. The Supreme Court held that there were sufficient materials before the learned Sessions Judge warranting the impugned directions. Although the judgment did not indicate if the witnesses at the trial had been cross-examined or not, the observation of the Supreme Court clearly suggested that at the stage of exercising the power under Section 319, Cr. P.C., the court was not called upon to appreciate the evidence which was to be done only at the final stage. This observation is certainly a pointer for the dispute now

raised in this application.

7. Reliance was also placed by the learned A. G. A. on a decision of this High Court given by Hon'ble C. A. Rahim. J. in the case of *Irshad and others v. State of U. P.*, 1995 JIC 1012. His lordship in this case held upon a question similar to the present one that cross-examination of a witness was not a condition precedent for taking recourse to the powers under Section 319, Cr. P.C. Reference was also made to another decision of this High Court recorded by Hon. N. B. Asthana, J. in the case of *Gurlabh Singh Majithia v. State of U. P.* and his Lordship was also of the view that summoning on the basis of examination-in-chief was within the competence of the trial.

8. This very point came before me as well in Cri. Misc. Application No. 1823 of 1995, *Ram Copal and another v. State*. In that unreported judgment, this Court had discussed what was the meaning of the term 'evidence' as used in Section 319, Cr. P.C. In that judgment, it was pointed out that the term 'evidence' was used in the Evidence Act in different context having different shades of meaning. This Court was also of the view that the power under Section 319, Cr. P.C. could have been exercised even on the basis of examination-in-chief of the witnesses and this Court felt that the persons summoned under Section 319, Cr. P.C. were to be tried together with the accused already on record and waiting for cross-examination before summoning under Section 319, Cr. P.C. would have been only a wastage of time and would have been an unnecessary exercise. In this unreported judgment, a reference was made to a larger Bench as Allahabad High Court decisions as indicated therein were in conflict. The decision of the Supreme Court in *Mahant Amarnath's case* (supra) was not cited during the hearing of that application and it had missed the attention of the court while recording that judgment.

9. As indicated in the earlier paragraphs, the Supreme Court clearly ruled in *Mahant Amamath's case* that at the stage of Section 319, Cr. P.C., the court was not required to appreciate the evidence to find a conflict between what was stated in the court and what was stated in Section 161, Cr. P.C. If this appreciation of evidence is not required at this stage of Section 319, Cr. P.C. it does not appeal to

reason why the court is to wait for the cross-examination of the witnesses before exercising its powers under Section 319, Cr. P.C. Under these circumstances, it is felt that the question that was referred to a larger bench in Crl. Misc. Application No. 1823 of 1995 by this Court on 17.7.1996 stands answered by the decision of the Supreme Court in Mahant Amarnath's case (supra). It is accordingly held that the Sessions Judge had every right to act upon the statements in examination-in-chief to summon an additional accused under Section 319, Cr. P.C. and the impugned order may not be challenged. Upon this finding, there is no necessity to record any opinion if the application should have been preferred before the revisional court or if a second revision is barred in the garb of an application under Section 482, Cr. P.C.

10. In view of the above, the present application stands dismissed.

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