

Mahaban and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Nov-19-1985

Reported in : 1986CriLJ1454

Judge : N.N. Sharma, J.

Appellant : Mahaban and ors.

Respondent : State of U.P.

Judgement :

ORDER

N.N. Sharma, J.

1. This revision is directed against order dt. 9-4-1985 recorded by Sri Surya Prasad, learned Sessions Judge, Mainpuri summoning the revisionists under Section 319, Cr. P.C in Sessions Trial No. 155 of 1984, State v. Gokul and others under Sections 147/148/149/302 IPC.

2. The aforesaid trial was initiated on the report of informant Vijendra Singh, P.W. 1, it related to the murder of one Shiama Devi which occurred on 23-10-1983 at 7-30 p.m. in village Phareha, district Mainpuri. Police submitted charge-sheet against four accused but submitted a final report under Section 169, Cr. P.C. against the revisionists even though specific role was assigned to them in that report.

3. At the stage of trial informant was again examined on 9-4-1985 and he testified on oath about the active participation of the revisionists in this crime. Knife, pistol, gun and lathi were assigned to the revisionists Mahaban, Het Singh, Om Prakash and Udaivir respectively. On the application by learned Counsel for the State the revisionists were summoned by the court under Section 319, Cr. P.C.

4. Being aggrieved, this revision has been preferred. I have heard Sri S. D. N. Singh, learned Counsel for the revisionists and learned A. G. A. 5.

5. On behalf of the revisionists it was argued that the procedure followed by the Magistrate was illegal. He did not write a detailed order for summoning the accused, when final report had been submitted by the police against these accused it could have operated as bar to summoning the accused in the trial. Unless the statement of informant was concluded the learned Sessions Judge should not have summoned the revisionists on such incomplete statement. Such incomplete statement could not be regarded as evidence. In this connection reliance was placed upon short notes in (1983) 2 Crimes (SN) 680 : 1983 Cri LJ NOC 98 in Amarjit Singh v. State of Punjab. In that case the petitioner was named as an accused along with two other persons in F.I.R. for an offence under Section 326/34, IPC and was challaned by the police but subsequently had been discharged by the Magistrate before commencing the trial. However, another Magistrate after recording the statement of the prosecution witnesses summoned the petitioner. That order was struck down on the ground that such statement which had not been tested on the anvil of cross-examination could not be treated as admissible 'evidence' within the meaning of Section 319, Cr. P.C. of the aforesaid Act No. 2 of 1974.

6. Obviously in that case order of discharge by one Magistrate might have weighed with the learned judges while recording that view.

7. Section 319, Cr. P.C. reads as below:

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 reheard:

(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....

8. This is a self-contained Section and fully empowers a Criminal court to add a person not being the accused before it and against whom during the trial evidence comes forth showing his involvement in the array of accused and try him along with those who are already being tried.

9. It is further significant to note that such satisfaction is of the Court summoning a person as an accused and not the satisfaction of this Court as was pointed out in *Joginder Singh v. State of Punjab*, reported in : 1979 CriLJ333 . In that case also police had submitted final report against the appellants but the Sessions Court summoned the appellants even though they had not been committed to the Court of Session under Section 193 of Cr. P.C.

10. The scope and ambit of Section 319, Cr. P.C. as laid above does not fetter the discretion of the Court with any limitation about the sufficiency of evidence or

stage of enquiry or trial sufficiency or insufficiency of that evidence is to be determined by that Court and not by this Court. In the aforesaid case *Joginder Singh v. State of Punjab* (supra) also statements of Mohinder Singh and Ajaib Singh were recorded and without any cross examination by the appellants of these witnesses the appellants were summoned and such order was upheld. It is correct that such power has to be exercised cautiously by the Court concerned but the entire matter has to be left unfettered to the discretion of the Court concerned so that it may act in accordance with law. It shall be open to the trial Court to discharge the revisionists if he is not satisfied about any prima facie case against them so as to justify framing of a charge. But that time the prosecution evidence can be tested by cross-examination on behalf of the revisionists also.

11. In *Bhagwant Singh v. Commr. of Police*, reported in : 1985 CriLJ1521 it was held that even in a case initiated on a police report where charge-sheet is not submitted by the police under Section 173, Sub-clause (2) of Cr. P.C. the informant has a right to be heard by the Court concerned.

12. In the instant case also the informant initiated these proceedings against the revisionists also and his statement on oath in the Court was quite consistent with his earlier versions laid in the F.I.R. and under Section 161, Cr. P.C. It is a different matter that police simply submitted a final report in the matter. Such report is not binding on the Sessions Judge. Even the Magistrate could have taken cognizance of offence under Section 190(b) of Cr. P.C. himself on the basis of such report Under Section 169, Cr. P.C. without following the procedure of a complaint case. Even in a complaint case without any cross-examination of the complaint or his witnesses under Section 200 or 202, Cr. P.C. Magistrate could find sufficient ground to proceed against the accused.

13. So I do not find anything illegal in the impugned order which must operate.

14. In the result revision is dismissed. Stay order dt. 5-9-1985 is vacated herewith. Let the disposal of the trial be expedited.