

Ravina Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-12-2005

Reported in : 2005CriLJ2019

Judge : K.N. Sinha, J.

Acts : Indian Penal Code (IPC) - Sections 120B, 307 and 504; Code of Criminal Procedure (CrPC) , 1974 - Sections 319

Appeal No. : Criminal Revision No. 3611 of 2004

Appellant : Ravina

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Pankaj Shukla, Adv.

Disposition : Revision allowed

Judgement :

ORDER

K.N. Sinha, J.

1. Heard learned counsel for the revisionist and the learned AGA.

2. The present revision has been filed against the judgment and order dated 10-8-2004 passed by 12th Additional Sessions Judge Mathura, in Sessions Trial No. 224/ 2004 State v. Jitu and Ors. under Section 307/504, IPC.

3. The brief facts giving rise to this revision are that an FIR was lodged by Ravina against four persons under Sections 307/ 504, IPC. The case was investigated and charge sheet was submitted only against two accused excluding Manju and Jaiveer. The case was committed to the Court of session and the trial was being held by 12th Additional Sessions Judge, Mathura. During the course of trial the prosecution examined witness Ravina son of Patiram as P.W. 1. This witness, during the course of his examination-in-chief named all the accused and also stated the weapon in the hands of all the accused including in the hands of Manju and Jaiveer. It has been stated by him that Manju and Jaiveer were armed with lathi. He further clarified the role of these two persons that they had caught hold of the complainant injured and Jeetu non applicant fired a shot on him. When this evidence came before the Court, the complainant moved an application under Section 319 of the Code of Criminal Procedure for summoning accused Manju and Jaiveer, so that they may be tried together with co accused.

4. A perusal of the impugned order shows that it is admitted fact that Manju and Jaiveer were named in the FIR but they were never charge sheeted. It is also admitted fact that they had been named by the injured witness Ravina (copy of statement Annexure 2). The Court gave the finding that, it would not be proper to summon Manju and Jaiveer as accused only on the basis of the examination in chief of the injured, especially when the Investigating Officer did not find their involvement during the investigation. Probably the trial Court has lost sight of this fact that if the Investigation Officer had charge sheeted these two persons, there would have been no need for invoking Section 319, Cr.P.C. The provisions of Section 319, Cr.P.C. has been made for such contingencies, where persons named in the FIR have not been charge-sheeted and the court, in the evidence, finds their involvement. As indicated earlier, copy of statement (Annexure 2) shows that the injured has stated about their involvement in the occurrence. The trial Court has cited one judgment of this Court Pradeep Kumar v. State of U.P., 2001 (42) All Cri C 1021. This judgment was placed before Hon. J.C. Gupta, J. in case of Manoj

Kumar v. State of U.P., wherein the law laid down in Pradeep Kumar's case was not agreed to by Hon. J.C. Gupta, and it was referred to larger bench. However, this was not the only judgment of this Court, which the trial Judge relied upon. In fact there is catena of judgments of this Court and that of the Apex Court which lay down that the accused named in the FIR but not charge-sheeted can be summoned by Court under Section 319, Cr.P.C. The Apex Court in Smt. Rukhsana Khatoon v. Sakhawat Hussain, 2002 (44) All Cri C 411 : (2002 All LJ 1516 : 2002 Cri LJ 2969) has laid down that an accused named in the FIR but not charge sheeted can be summoned by the Court under Section 319, Cr.P.C.

5. The trial Judge has also cited a reference in the judgment as 2000 (40) All Cri C 795 : (2000 Cri LJ 1706), I have perused this judgment of the Apex Court. The facts and circumstances of the said case are quite different to the normal circumstances. In the said case 49 witnesses were already examined but they did not utter a single word against any of the persons who were not accused. These were only the last three witnesses who disclosed their names. With this back drop the Apex Court held that no doubt there is a reference in their evidence to the role played by the appellant, but such a reference is insufficient to make out a case of criminal conspiracy under Section 120B, IPC against the appellants. This authority nowhere curtails the power of the Court to invoke the provisions of Section 319, Cr.P.C.

6. So far as the finding recorded by the trial Judge, regarding the legal position that only on the basis of cross-examination no person can be summoned as accused is concerned, is highly erroneous. It appears that the trial Court does not find himself abreast with the law on the subject while passing the order. The trial Court is well advised to go through the case of Ram Gopal v. State of U.P., 1999 (38) All Cri C 123 : (1999 All LJ 539 : (1999 Cri LJ 1865) which has interpreted the term 'Evidence' used in Section 319, Cr.P.C. and came to the conclusion in para 41 of the judgment that 'The term 'Evidence' as used in Section 319, Cr.P.C. does not mean an 'Evidence' complete by cross-examination and the Court can take action under Section 319, Cr.P.C. even on the statement made in examination in chief of one or more witnesses. This Division Bench decision of this Court was examined by Hon'ble the Apex Court in Rakesh v. State of Haryana, 2001 CBC

737 : (2001 Cri LJ 3511). The Apex Court after examining the authorities on the subject came to the conclusion that 'evidence' as used in Section 319, Cr.P.C. would mean the uncross-examined stage of witness. The Court further observed that the question of testing the evidence by cross-examination would arise only after addition of the accused and there is no question of cross-examining the witness prior to adding such person as accused.

7. In view of the above legal position the impugned order is not tenable in the eyes of law.

8. The revision is allowed. The order dated 10-8-2004 is set aside. Interim order dated 19-8-2004 stands vacated. The matter is remanded back to the concerned trial court for reconsidering the application '11-KHA' of the prosecution for summoning accused Manju and Jaiveer. Learned 12th Additional Sessions Judge, Mathura would go through the relevant law laid down by this Court and that the Apex Court on this point and then to dispose of the application in accordance with law.

9. The Registry of this Court shall send a copy of this judgment to the District and Sessions Judge, Mathura within a week, or future guidance to the officer concerned and to direct him to properly appreciate the law laid down by the superior courts and follow the principles of law in true letter and spirit.

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