

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

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Court : Allahabad

Decided On : Jul-24-2001

Reported in : 2001CriLJ4789

Judge : J.C. Gupta, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 4, 169 and 319

Appeal No. : Cri. Revision No. 1889 of 2001

Appellant : Jagdish and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Rajesh Kumar Singh, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

J.C. Gupta, J.

1. Heard.

2. This revision is directed against the order dated 7-7-2001 passed by Additional Sessions Judge, Banda (Fast Track Court) in Session trial No. 63/1997 whereby the present applicants have been summoned as accused persons to face their trial alongwith the accused who is already before the Court. This order has been passed in exercise of powers conferred on the Sessions Judge under Section 319 Cr. P.C.

3. It has been submitted by the applicants counsel that the applicants were nominated in the First Information Report but the investigating officer found no case against them and thus submitted charge sheet only against the husband of deceased. However after the statement of P.W.1 was recorded during trial, an application was moved for summoning the present applicants as accused because P.W.1 in his statement on oath has clearly stated facts leading to the 'dowry death' of the deceased and also named the present applicants.

4. It has been submitted by learned Counsel for the applicants that in a case where an accused was nominated in the First Information Report but was not charge sheeted, in relation to such person powers under Section 319 Cr. P.C. cannot be invoked and in support of his submission he placed reliance upon a Single Judge decision of this Court in Pradeep Kumar v. State of U.P. 2001 (42) A.C.C. 1021 and the Apex Court decision in Michael Machado v. C.B.I. (S.C.) 2000 (40) A.C.C. 795 (AIR 2000 SC 1127)

5. As far as decision in Pradeep Kumar's case is concerned, it is directly against the Supreme Court decisions in Joginder Kumar v. State of Punjab 1979 SCC (Cr) 295 (AIR 1979 SC 339) and Girish Yadav v. State of M.P. (1996) 8 SCC 186 (AIR 1996 SC 3098) wherein it was held that the expression 'any person not being the accused' occurring in Section 319 Cr. P.C. does not exclude a person dropped under Section 169 Cr. P.C. to face trial. In the case of Municipal Corporation of Delhi v. R.K. Rohatgi AIR 1983 SC 67 (1983 Cri.LJ 159), it was held by the Apex Court that Section 319 Cr. P.C. gives ample powers to any Court to take cognizance and add any person not being an accused before it and try him alongwith other accused. In this case also the emphasis was that any person could be added as an accused who is not arraigned as an accused before the

Court to stand his trial alongwith other accused already facing trial. In the case of *Kishun Singh v. State of Bihar* 1993 A.C.C, 167 (1993 AIR SCW 771) (SC) the Apex Court went on to hold that even a person who has earlier been discharged will fall within the sweep of the powers conferred by Section 319 Cr. P.C.

6. The decision in *Michael Machado v. C.B.I.* (Supra) on which reliance has been placed in the case of *Pradeep Kumar* (Supra) is wholly distinguishable on facts. It nowhere lays down that a person who was nominated in the F.I.R. but was not sent up for trial cannot be summoned under Section 319, Cr. P.C. In this case after registration of F.I.R., case was investigated and charge sheet was submitted only against four accused. Trial also commenced against those four accused and a number of witnesses were examined. Until 49 witnesses were examined by the prosecution, the trial Magistrate had no reason to feel the necessity to implead the newly added accused persons. It was only when the evidence of remaining three witnesses was recorded, it appeared to the Magistrate that newly added accused were also involved in the crime. So he summoned them under Section 319, Cr. P.C. On these facts it was observed that the basic requirement for invoking Section 319 that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for 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. In other words, 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 offence that other person could as well, be tried alongwith the already arraigned accused. It was further observed that the power is discretionary and it should be exercised only to achieve criminal justice. And to decide whether to invoke the power under Section 319 of Code, the Court must address itself about other constraints imposed by first limb of Sub-section (4), that proceedings in respect of newly added persons shall be commenced afresh, and the witnesses re-examined. The whole proceedings must be recommenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite a large in

number the Court must seriously consider whether the object sought to be achieved by such exercise is worth wasting the Whole labour already undertaken.

7. Thereafter on the basis of the facts of that particular case it was observed that prosecution had already examined quite a large number of witnesses and they were cross-examined by the defence. The statements of the witnesses who had named the accused persons were also perused by the Apex Court and it was concluded that their statements, no doubt created some suspicion against the newly added accused but that suspicion was not found sufficient to hold that there was reasonable prospect of convicting the newly added persons of the offence of criminal conspiracy and thus the Apex Court felt that a situation had not reached as to waste the whole massive evidence already collected by the trial Court thus far, against the four accused arraigned in the case and for these reasons the order of the Magistrate was set aside. this Court is unable to locate any observation or holding in that decision that whenever an accused is named in the F.I.R. he is a person already arraigned as an accused in that case. In my opinion the expression 'any person not arraigned as an accused in that case' would mean a person who has not been sent up for trial by the police irrespective of the fact whether he was nominated as an accused in the F.I.R. or not. Thus no force is found in the submission of the learned Counsel for the applicants that since the applicants were named in the F.I.R. but were not charge sheeted, they cannot be summoned under Section 319, Cr. P.C.

8. It was then next submitted by the applicants' counsel that the Court below has committed an error of law in passing order under Section 319, Cr. P.C. merely on the basis of un-cross examined statement of P.W. 1. This question is no more debatable as it has been set at rest by a Division Bench of this Court in the case of Ram Gopal v. State of U.P., 1999 (38) ACC 123 : (1999 All LJ 539).

9. The question referred to the Division Bench was whether the term 'evidence' as used in Section 319, Cr. P.C. could only mean an evidence complete by cross-examination or if the Court can take action under Section 319, Cr. P.C. even on the statement made in examination-in-chief of one or other witnesses. The Division Bench answered this question in affirmative as follows :-

The term 'evidence' as used in Section 319 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.

10. The contrary view taken in some Single Judge decisions, of the cases of Gulab Singh, 1997 (2) Criminal 307 (sic) Mohan Lai 1990 U.P. Criminal Report 254 (sic) Kali Shankar Srivastava 1993 CCR 2596 and Brij Pal Singh 1996 (34) ACC 34 (sic) was overruled.

11. Therefore, in view of the aforesaid Division Bench decision, this submission of the learned Counsel also deserves rejection.

12. It was then submitted by appellants' counsel that applicant No. 3 Baboo alias Naresh at the time of incident was only eleven years old and, therefore, it was highly improbable that he would have also committed crime alleged against him. In the absence of sufficient material, this Court is not in a position to express any opinion on this question. Therefore, the said applicant is at liberty to press this issue before the trial Court at the time of framing of charge. If such an objection is raised, the trial Court shall apply its mind to find out whether there are sufficient grounds to proceed against this applicant also.

13. With the above observations, this revision is dismissed.