

Vedi Ram Alias Medi Ram and ors. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Sep-24-2002

Reported in : 2003CriLJ1084

Judge : R.K. Dash, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 88, 319, 437 and 439

Appeal No. : Criminal Misc. Appln. No. 823 of 2002

Appellant : Vedi Ram Alias Medi Ram and ors.

Respondent : State of U.P. and anr.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : D.N. Wali, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R.K. Dash, J.

1. Aggrieved by the order of the learned II Additional District Judge, Agra adding the petitioners as accused persons in S.T. No. 714 of 2000 in exercise of power under Section 319 of the Code of Criminal Procedure (in short 'the Code'), the

petitioners have approached this Court by filing the present petition.

2. Short facts as borne out from the materials on record are that Geeta Ram, respondent No. 2 lodged an FIR at Sadar P.S. Agra on the basis of which case crime No. 419 of 2000 under Sections 304B and 498A, I.P.C. and Section 3/4 of Dowry Prohibition Act was registered. The police after investigation laid charge sheet only against Khem Karan, husband of the Narayani Devi, the deceased. After commitment, the case was transferred to the Additional District Judge, Agra for disposal in accordance with law. In course of trial, the prosecution examined some witnesses who in their evidence implicated the petitioners in the alleged incident. In view of such evidence, the trial Judge in exercise of power conferred by Section 319 of the Code arraigned them as accused and directed for issuance of process for their appearance. Legality and correctness of this order was challenged in this Court in criminal revision No. 442 of 2001. Upon hearing, the Court allowed the revision and set aside the said order challenging which the informant approached the Supreme Court. It is admitted case of the parties that order of this Court was set aside and that of the learned trial Judge was restored. In the meanwhile, the aforesaid session trial was transferred to the Fast Track Court No. III who having gone through the order of this Court and the Supreme Court summoned the petitioners to face the trial. Without appearing before the trial Court, it is stated, the petitioners by engaging counsel requested to fix another date since someone died in their family. Having accepted the request, the court adjourned the trial to a future date with the observation that the petitioners may apply for bail. In view of such observation, the petitioners apprehended that on the date of appearance, they may be taken to custody and sent to jail. This apprehension necessitated them to file the present case seeking the relief as mentioned above. It is contended by the learned counsel appearing for the petitioners that since the petitioners have been arrayed as accused by the trial Court in exercise of power under Section 319 of the Code, on their appearance the Court, instead of sending them to jail should release them on their executing bonds in terms of Section 88 of the Code. In other words, it is urged by the counsel that since the petitioners were not charge sheeted by the police to face the trial and it was the Court who added them as accused, they are not required to seek for release on bail and on their appearance in response to the summons it is

incumbent upon the Court to accept bonds with or without sureties. In support of the aforesaid contention, reliance was placed on a decision of this Court in the case of Chandra Pal Singh v. State of U.P. 1991 All Cri R 228 : (1991 All LJ 624) and of the Supreme Court in the case of P. V. Narasimha Rao v. State of (CBI/ SPE); 1996 (2) JIC 1356 (SC).

3. The aforesaid submission has been seriously challenged by the learned Additional Government Advocate. He submits that on appearance of the petitioners in response to summons/notice, they shall be taken to judicial custody and in the event, they move any application for bail, the Court will consider the same keeping in mind the nature and gravity of the offence. Provision regarding bail cannot be done away with merely because the petitioners were added as accused by order of the trial Judge under Section 319 of the Code,

4. The argument advanced by the learned counsel for the petitioners as aforesaid is not only fallacious but also has no sanction under law, It is the statutory duty of the police to Investigate the circumstances of a cognizable offence under the Code. The investigation starts after information is received in respect of an offence. In course of investigation, the police proceeds to the spot, ascertains the facts and circumstances by examining the various persons acquainted with the facts of the case, makes seizure of things considered necessary for investigation and arrests the accused persons. So, arrest of the accused is a step in furtherance of investigation. As soon as the accused is arrested, he is produced before the Magistrate within the time prescribed by law. Thereupon, he is taken to judicial custody and in the event, he applies for bail, the Magistrate taking into consideration the nature and gravity of the offence and materials collected during investigation may either admit him to bail or reject the application. Similarly when an accused, who could not be arrested by the police during investigation, appears and surrenders to the jurisdiction of the Court, he will be deemed to be in judicial custody and in his case provision of bail as provided in the Code also applies. These are the basic principles of criminal law.

5. There cannot be two separate laws one for the accused against whom police submitted charge-sheet and the other who was dropped from the array of the

accused by the police but has been added by Court's order under Section 319 of the Code. Suppose in a case where the police in spite of there being sufficient materials did not file charge-sheet against a person for oblique motive and the Court on the basis of the evidence adduced during trial added him as accused, can it be said that since the police had given him a clean chit and it was by judicial order that he has been brought on record as accused, the Court cannot remand him to judicial custody and as of right, he will be released on his executing bond? To this my answer is in the negative. Once a person has been arraigned as accused under Section 319 he stands on the same footing as the other accused against whom police has filed charge-sheet and, therefore, on his appearance it is obligatory of the Court to send him to judicial custody.

6. The provisions of bail as contained in Chapter XXXIII of the Code apply to a person added as accused during trial. He cannot be presumed to be innocent since because the police did not submit charge-sheet against him. So in the event, he moves an application for bail, the same would be considered on the basis of the evidence adduced by the prosecution. Section 88 of the Code cannot be interpreted to mean that the person who has been added as accused by Court's order cannot be remanded to judicial custody and without there being any order of bail, Court will release him on his executing bond with or without sureties. The aforesaid provision is not a substitute of Sections 437 and 439 of the Code. The submission of the learned counsel for the petitioners if accepted and the provision of bail are held to have no application to a person arraigned as accused under Section 319, it will lead to disastrous consequence. The police will act as a protector of a person involved in heinous crime and long arm of law cannot apprehend and lodge him behind the bar. This will create an impression in the minds of the general public that the police are more powerful than the law. In the decision in Chandra Pal Singh (1991 All LJ 624) (supra) on which reliance was placed by the counsel for the petitioners, the question for consideration was whether the order arraying the petitioners of the said case as accused under Section 319 was legally sustainable. The Court while not interfering with the order of the trial Court made reference to sub-sections (2) and (3) of Section 319 and Section 88 of the Code and observed that the Court can resort to later provision and 'bind down the added accused with personal bonds with or without sureties'

and accordingly, directed the Court below to obtain necessary bonds with or without sureties for his appearance In future dates. On scrutiny of the said judgment, it appears that no argument was advanced as to the applicability of Section 88 of the Code to the facts and circumstances of the said case. So when the question was not agitated as to whether the added accused was required to move for regular bail or Section 88 would take care of him, anything said or any observation made by the Court in the said judgment is confined to that case only.

7. The other decision in P. V. Narashimha Rao (supra) rendered by the Supreme Court on which reliance was placed has no relevance to the facts and circumstances of the present case; In the said case Chief Metropolitan Magistrate, New Delhi added P. V. Narashimha Rao, the petitioner therein as accused in exercise of power under Section 319 and issued process for his appearance. The order of the C.M.M. came to be challenged before the Delhi High Court and the same having been affirmed, the petitioner approached the Supreme Court. Having considered the submission of the counsel appearing for the petitioner and the Attorney General, the Court in paragraph 4 of the judgment observed that since the impugned order of the learned Magistrate is based on the evidence adduced by him and at that stage he did not hear the petitioner, it is open to the petitioner to show to the Magistrate that on the basis of the evidence adduced during trial, no case can be said to have been made out for proceeding against him. So when the liberty was given to the petitioner to raise the question of absence of evidence for taking resort to Section 319, the Court exempted personal appearance of the petitioner.

8. Regard being had to the facts and circumstances of the case and the nature and gravity of the offence. I would hold that Section 88 of the Code cannot come to the aid of the petitioners and the Court below cannot be asked to let them off on taking bonds with or without sureties.

9. In the result, criminal misc. application fails and the same is dismissed. Learned trial Judge is directed to take steps in accordance with law to apprehend the petitioners if they or any of them have not entered appearance.

