

Rukvendra Singh and ors. Vs. State of M.P. and anr.

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Court : Madhya Pradesh

Decided On : Jan-16-2004

Reported in : 2004CriLJ1489; 2004(2)MPHT71; 2004(4)MPLJ249

Judge : A.K. Gohil, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 190 and 193;
Indian Penal Code (IPC) - Sections 34, 147, 148, 149, 204, 307, 325 and 451;
Arms Act - Sections 25 and 26

Appeal No. : Criminal Revision No. 69/2002

Appellant : Rukvendra Singh and ors.

Respondent : State of M.P. and anr.

Advocate for Def. : A.K. Ahiwar, Addl. Govt. Adv. for Respondent No. 1 and ;A.K. Barua, Sr. Adv. and ;Vinay Sharma, Adv. for Respondent No. 2

Advocate for Pet/Ap. : V.K. Saxena, Sr. Adv. and ;Prasoon Maheshwari, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

A.K. Gohil, J.

1. This is criminal revision under Section 397/401 of Cr.PC against the order dated 8-2-2002 passed by Judicial Magistrate, 1st Class, Gwalior in Cr. Case No. 1/2002.

2. On 2-1-2002, respondent No. 1 State filed a charge-sheet in Crime No. 108/2001, for the offences under Sections 147, 148, 149, 307/34, 451, 204 and 325 of IPC and Sections 25 and 26 of Arms Act against seven accused persons before Judicial Magistrate, 1st Class, Gwalior. Complainant filed an application under Section 190 of Cr.PC before the Magistrate and submitted that in this case, incident took place on 4-10-2001 at 6 P.M., at that time, Dadhi Bal Singh, Jabar Singh, Tahsildar Singh and complainants were at their house. The accused persons along with Virendra Singh, Narendra Singh, Kallu, Chhunna, Rukuvendra Singh, Neelu alias Kunal Singh and Lokendra Singh came with the common intention along with deadly weapons like gun, katta, saria and lathi and assaulted on the complainant party by gun fire and caused injuries to the complainant party. Report was lodged. Cognizance was taken by police and the case was registered and the statements of witnesses under Section 161 of Cr.PC, were recorded but the petitioners/accused persons being resourceful, got their names dropped with the help of DSP from the charge-sheet. Therefore, prayed that the cognizance be taken against the other accused persons (petitioners) against whom, police has not filed charge-sheet.

3. After hearing learned Counsel for the parties, the Trial Court in the impugned order found that sufficient material is available in the FIR as well as in the statements of the eye-witnesses recorded under Section 161 of Cr.PC for the involvement of the petitioners in the commission of crime and the prima facie evidence is available against them and placing reliance on a decision of Supreme Court in the case of Rajendra Prasad v. Bashir Ahmed, reported in [2001 CAR 485 : 2002 SCC (Cr.) 28] allowed the application filed by the complainant under Section 190 of Cr.PC, and taken cognizance against all the petitioners under Sections 147, 148, 149, 294, 451 and 307/34 of IPC and directed that they be summoned through warrant of arrest, against which, the petitioners have filed this criminal revision.

4. I have heard learned Counsel for the parties and perused the impugned order and the judgment of the Apex Court in the case of Rajendra Prasad (supra).

5. Learned Counsel for the petitioners vehemently submitted that the Magistrate is having no jurisdiction under Section 190 of Cr.PC to take cognizance in the matter and to add any person and has also placed reliance on the decisions of Supreme Court by citing various decisions. In the case of Kishnu Singh v. State of Bihar, reported in 1993 SCC (Cr.) 470, in which the question was, whether, the Court of Sessions to which the case is committed for trial by Magistrate, can without recording evidence summon a person named in the police report presented under Section 173 of Cr.PC in exercise of powers conferred by Section 319 of the Code, in which, it was held that the Sessions Judge, was having power to take cognizance in the matter. Again in the case of Rajkishore Prasad v. State of Bihar and Anr., reported in 1996 SCC (Cr.) 772, the Supreme Court has held that the proceedings under Section 209 of Cr.PC before a Magistrate, is not an enquiry and material before him is not evidence. On committal, the Court of Sessions, can exercise jurisdiction under Section 319 of Cr.PC and add new accused on the basis of evidence recorded by it but it was argued by other side that in the case of Raj Kishore Prasad (supra), the provisions of Section 190 of Cr.PC, were not discussed or considered.

6. Again in the case of Ranjit Singh v. State of Punjab, reported in 1998 SCC (Cr.) 1554, the Supreme Court has held that the provisions of Section 319 of Cr.PC can not be invoked before evidence and the Sessions Court can invoke revisional powers to summon such persons. Again in the case of Kishore Singh v. State of Bihar and Anr., reported in 2000 (4) Crimes 158 (SC), the Supreme Court has held that when the offence is triable by Sessions Court, police not naming certain persons in charge-sheet, Magistrate, could not have issued process against those persons not charge-sheeted, they can be arrayed as accused persons in exercise of powers under Section 319 of Cr.PC. In reply, it was argued that the Magistrate is having jurisdiction and has rightly placed reliance on the decision of Rajendra Prasad (supra).

7. In case of Rajendm Prasad (supra), the Supreme Court has considered the provisions of Sections 190, 209, 216 and 323 of Cr.PC and after placing reliance on two earlier decisions, i.e., in the case of Raghuvansh Dubey v. State of Bihar, reported in AIR 1967 SC 1167 (Three Judges), and Swil Ltd. v. State of Delhi, reported in (2001) 6 SCC 670, held that under Section 190 of Cr.PC, Magistrate can exercise jurisdiction and can take cognizance in the matter. In the case of Raghuvansh Dubey (supra), Supreme Court held as under:--

'In the present case, there is no question of referring to the provisions of Section 319 of Cr.PC. That provision would come into operation in the course of any inquiry into or trial of an offence. In the present case, neither the Magistrate was holding inquiry as contemplated under Section 2(g) of Cr.PC nor had the trial started. He was exercising his jurisdiction under Section 190 of Cr.PC of taking cognizance of an offence and issuing process. There is no bar under Section 190 of Cr.PC that once the process is issued against some accused, on the next date, the Magistrate can not issue process to some other person against whom, there is some material on record, but his name is not included as accused in the charge-sheet.'

8. It is not in dispute that in the case of Raghuvansh Dubey (supra), Supreme Court has specifically considered the provisions of Section 190 of Cr.PC, and held that under this section, a Magistrate, has jurisdiction to take cognizance of offences against such persons also who have not been charge-sheeted by the police as accused persons, if it appears to the Magistrate from the evidence collected by the police that prima facie evidence is available against them, cognizance can be taken. Section 209 of the Code provides that when in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate, and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit, after complying with the provisions of Section 207 or Section 209, as the case may be, the case to the Court of Sessions and subject to the provisions of the Code. This section refers back to Section 190, as is evident from the words 'instituted on a police report' used in Section 190(1)(b) of the Code. While dealing with the scope of Section 190, this Court held that the cognizance taken by the Magistrate, was of the

offence and not of the offenders. Having taken cognizance of the offence, a Magistrate can find out who the real offenders were and if he comes to the conclusion that apart from the persons sent by the police some other persons were also involved, it is his duty to proceed against those persons as well.

9. Having heard learned Counsel for the parties and after perusal of the provisions of Sections 190 and 193 of Cr.PC and considering the ratio decided by the Hon. Supreme Court in the case of Rajendra Prasad (supra), it is clear that under Section 190 subject to the provisions of this chapter any Magistrate of 1st Class, may take cognizance of any offence :

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed;

the Magistrate may take cognizance of any offence and in view of this specific bar under Section 193 of Cr.PC that except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code. As per the decision in the case of Ranjit Singh (supra) and Kishnu Singh (supra), the Sessions Court can also take cognizance on committal of the case, and as per the decision in the case of Rajendra Prasad (supra) before committal, under Section 190 of Cr.PC, a Magistrate can take cognizance of any offence. Thus, in view of the ratio decided in the case of Rajendra Prasad (supra), the learned Trial Court has rightly allowed the application of the complainant and has rightly added the petitioners in the case. Accordingly, I do not find any merit in this criminal revision, consequently, this revision is dismissed.

10. In the last, learned Counsel for the petitioners submitted that their grievance is also against the issuance of arrest warrant against them. In view of the facts and circumstances of the case, liberty is granted to the petitioners, if they so desire,

they may appear before the Trial Court within 15 days and may apply for regular bail.

11. With the aforesaid directions, this revision is dismissed.

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