

Duryodhan and Others Vs. State of M.P. and Another

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Court : Madhya Pradesh

Decided On : Sep-06-2000

Reported in : 2001CriLJ1614; 2001(1)MPHT215

Judge : Mr. S.C. Pandey, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 164, 319 and 397; [Evidence Act, 1872](#) - Sections 319

Appeal No. : Criminal Revision No. 1153/2000

Appellant : Duryodhan and Others

Respondent : State of M.P. and Another

Advocate for Def. : Shri Prakash Gupta, Panel Lawyer

Advocate for Pet/Ap. : Shri S.L. Kochar, Adv.

Disposition : Revision Dismissed

Judgement :

ORDER

S.C. Pandey, J.

1. It appears from the impugned order dated 7-8-2000 passed by IInd Additional Sessions Judge, Chhatarpur in Sessions Trial No. 34/2000, that the learned

Additional Sessions Judge has exercised its power under Section 319 of the Code of Criminal Procedure and has found that the applicants are also liable to be prosecuted alongwith other co-accused persons. Learned counsel for the applicants argued that the statement made by Rammilan alias Bandar could not have been relied upon by Court below for exercising power under Section 319 of the Code of Criminal Procedure. Section 319 of the Code of Criminal Procedure says that the Court is empowered to accuse any person who has not been made an accused if it appears from the evidence on record that he top is liable to the prosecuted and tried together with other accused persons. Learned counsel for the applicants relied on the decision in the case of Gulam Mondal v. Nazam Hossain and others, reported in 1987 Cr.LJ 729. It appears from the impugned order dated 7-8-2000 that the Court below has relied on the evidence of Rammilan son of the deceased Maheshwara. He has stated in the Court that all the applicants were present and they were involved in the crime. The learned Additional Sessions Judge has found corroboration in the statement of Rammilan with the F.I.R. and the statement made under Section 161 of the Code of Criminal Procedure. Even the statements of Rammilan and other witnesses under Section 164 of the Code of Criminal Procedure were also considered. The learned Trial Judge has referred to the decision of the Supreme Court in the case of Joginder Singh and another v. State of Punjab and another, reported in AIR 1979 SC339 and also the decision of this Court in the case of Narmada Prasad Pandey v. State of M.P., short noted in 1998 (II) MPWN Short Note 226. It is apparent from the language of Section 319 of the Code of Criminal Procedure that the Court is definitely authorised to exercise its power thereunder when it appears from the evidence on record 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. It has been argued that the investigating agency itself was not convinced and, therefore, it has not prosecuted the applicants. Consequently, the Court should not have exercised its power under Section 319 of the Code of Criminal Procedure on the basis of the evidence of single witness i.e. Rammilan alias Bandar.

3. In the opinion of this Court, this argument cannot be accepted because occasion to exercise power under Section 319 of the Code of Criminal Procedure would arise only when the investigating agency has omitted certain persons from the charge- sheet initially. The Court is not bound to consider the reason given by the investigating agency for omitting those accused persons because it is entitled to consider the case against the persons omitted from the charge-sheet, from the point of view of the evidence recorded during the trial. The evidence, obviously, is a statement made by a witness on oath and this statement may be given higher priority than the report of the investigating agency. In this particular case, if the Court was convinced from the evidence on record that there was a prima facie case for exercise of jurisdiction against the applicants, it would not be possible to interfere with at this stage in this revision.

4. Accordingly, this Court does not find any merit in this revision. The revision is, therefore, dismissed and so also the Misc. (Cr.) P. No. 623/2000 for grant of stay,

5. Criminal Revision dismissed.