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Savitri Devi Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : May-11-1993

Reported in : 1994CriLJ202

Judge : A.S. Nehra, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 19, 31, 161, 193, 209 and 319; Indian Penal Code (IPC) - Sections 363, 366, 380, 376, 382, 414 and 506

Appeal No. : C.R. No. 14 of 1993

Appellant : Savitri Devi

Respondent : State of Haryana

Advocate for Def. : K.S. Godara, AAG

Advocate for Pet/Ap. : Baldev Singh, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

A.S. Nehra, J.

1. This revision petition is directed against the order dated 24th December, 1992 passed by the Additional Sessions Judge, Sirsa, by which Savitri Devi has been summoned under Section 319 of the Code of Criminal Procedure to stand trial for the commission of the offences under Sections 382/414 of the Indian Penal Code along with Brij Mohan.

2. According to the prosecution allegations, Brij Mohan kidnapped/abducted Savitri Devi on 4th May, 1992. The First Information Report under Sections 363/366 of the Indian Penal Code was recorded on the statement of Om Parkash on 5th May, 1992. Om Parkash stated that his sister Savitri Devi had been going to Ellenabad for the last 10/12 days under the pretext of taking some medicines from there and that his brother Mange Ram had told him that Brij Mohan had gone from the village to Ellenabad on 4th May, 1992 for meeting Savitri Devi and from there, both of them escaped together after he left Savitri Devi at some Video Centre. Om Prakash further alleged that various ornaments and cash amount of Rs. 20,000/- had been stolen from his house by Savitri Devi while going away. He further raised suspicion that Brij Mohan had enticed Savitri Devi. Om Prakash stated that the age of Savitri Devi was 16 years.

3. On 7th August, 1992, Brij Mohan suffered a disclosure statement before the Assistant Sub-Inspector Satbir Singh, Bal Ram and Atma Ram to the effect that he had disposed of various ornaments after taking the same from Savitri Devi at Delhi and Ahmedabad. Recoveries were effected in pursuance of this disclosure statement on 10-8-1992, 12-8-1992 and 19-8-1992 from different places.

4. Savitri Devi prosecutrix also suffered a disclosure statement on 7th August, 1992 as accused in this case wherein she stated that she and Brij Mohan had sold some ornaments at Delhi and Ahmedabad. On 12th August, 1992, the investigating officer recorded the statement of Savitri Devi under Section 161 of the Code of Criminal Procedure, wherein she changed the stance by stating that she had been allured by Brij Mohan and that upon his allurements, she has taken the various ornaments from her house. She further stated that under threats of Brij Mohan she had signed certain papers showing that she was married to Brij Mohan. She further stated that she had remained in the company of Brij Mohan at

various places like Jodhpur, Ahmedabad and Jamnagar and she was subjected to rape during this period by Brij Mohan.

5. The police is stated to have discharged Savitri Devi on 13th August, 1992 in the light of her statement under Section 161 of the Code of Criminal Procedure made on 12th August, 1992. Thus prior to 12th August, 1992 the stand taken by Savitri Devi was that she had gone along with Brij Mohan on her own. The learned Additional Sessions Judge, Sirsa, after hearing the case of framing the charge held that 'in these circumstances, I am of the view that discharge of Savitri Devi at this stage is improper. There are sufficient grounds to proceed against her also for the commission of the offence under Section 380 of the Indian Penal Code. This is because her own brother Om Parkash has stated in the FIR that various ornaments and the cash amount were taken from the house by Savitri Devi and then Savitri Devi herself made a disclosure statement on 7th August, 1992 leading to the recovery of these ornaments. Whether she was allured by accused Brij Mohan or whether she was hand in glove with him, will be determined only during the trial. It is strange that the prosecution has not challenged her to face trial for the commission of offence under Sections 380/414 of the Indian Penal Code and has chosen to challan only the accused Brij Mohan for the commission of these offences under Sections 363/366/376/506 of the Indian Penal Code.

6. Savitri Devi was summoned under Section 319 of the Code of Criminal Procedure to face trial for the commission of the offences under Sections 380/414 of the Indian Penal Code by the learned Additional Sessions Judge Sirsa.

7. Mr. Baldev Singh, Advocate, the learned Counsel for the petitioner submitted that once a Court of Session takes cognizance, the power to summon or arrest a person not named in the police report can be exercised under Section 319 of the Code only if the condition precedent, namely, commencement of the trial and recording of evidence, is satisfied. This, he contends, is manifest from the language of this Section and this power can be exercised only after recording the evidence during the trial of the case.

8. Learned Counsel for the State Mr. K.S. Godara, Assistant Advocate General, Haryana, has contended that the Court of Session had power under Section 193

of the Code to summon the petitioner as her involvement in the commission of offence prima facie appearing from the record of the case. In support of his argument, he has relied upon a Supreme Court decision Kishun Singh v. State of Bihar, 1993 (1) Rec Cri R 647 : (1993 Cri LJ 1700). It has been held by the Supreme Court in Kishun Singh v. State of Bihar, (supra) that once the Court takes cognizance of the offence (not of the offender) it becomes the court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the court's duty to summon them to stand trial along with those already named, since summoning them would only be part of the process of taking cognizance 'It has been further held that we have also pointed out the difference in the language of Section 193 of the two Codes, under the old Code the court of Session was precluded from taking cognizance of any offence as a court of original jurisdiction unless the accused was committed to it whereas under the present Code the embargo is diluted by the replacement of the words, 'the accused' by the words 'the case'. Thus on a plain reading of Section 193 as it presently stands once the case is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case under Section 209 of the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record.' It was further held that 'for the reasons stated above while we are in agreement with the submission of the learned Counsel for the appellants that the stage for the exercise of power under Section 31 of the Code had not reached, inasmuch as, the trial had not commenced and evidence was not led, since the Court of Session had the power under Section 193 of the Code to summon the appellants as their involvements in the commission of the crime prima facie appeared from the record of the case, we see no reason to interfere with the impugned order as it is well settled that once it is found that the power exists, the exercise of power under a wrong provision will

not render the order illegal or invalid. We, therefore, dismiss this appeal.'

9. After hearing the counsel for the parties, I hold that since the Court of Session had the power under Section 19 of the Code of Criminal Procedure to summon the petitioner as her involvement in the commission of offence prima facie appeared from the record of the case and I see no reason to interfere with the impugned order dated 24th December, 1992 passed by the learned Additional Sessions Judge, Sirsa as it is well settled that once it is found that power exist, exercise of power under a wrong provision will not render the order illegal or invalid.

10. In view of the above discussion, there is no merit in the revision petition and the same is dismissed.

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