SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Baldev Kumar Vs. State

Baldev Kumar Vs. State

SooperKanoon Citation : sooperkanoon.com/690483

Court : Delhi

Decided On : Oct-16-1987

Reported in : 1987(3)Crimes645; 33(1987)DLT341

Judge : M.K. Chawla, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 173; Indian Penal code, 1860 - Sections 420

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 612 of 1987

Appellant : Baldev Kumar

Respondent : State

Advocate for Pet/Ap. : P.S. Sharma and; Bharati Anand, Advs

Judgement :

M.K. Chawla, J.

(1) On 13-2-1986, the Additional Commissioner of Police (Administration) forwarded a report under Section 173 of the Code of Criminal Procedure for the filing the same in the Court of a Metropolitan Magistrate, New Delhi to initiate proceedings against Baldev Kumar and Hari Dayal for offences under Sections 419/420/467/471 I.PC. In brief the allegation is that accused Baldev Kumar handed over a forged passport no. 1773337 of one Amrik Singh, to Hari Dayal, his

co-accused on or before 15-8-1985 and charged a sum of Rs. 10,000.00 . Hari Dayal was asked to give his name as Amrik Singh to the immigration staff at the Palam Airport. On scrutiny the passport with Hari Dayal was found to be a forged one. During interrogation Hari Dayal disclosed the circumstances under which he was duped by Baldev Raj. Both the accused were arrested at the Airport. After completing the investigation the challan was filed.

(2) Before taking cognizance, the learned lower court noticed that the name of Baldev Kumar is shown in column no. 2 as well as in column no. 4. From the report, he could not make out as to how the name of Baldev Kumar has been placed in column no. 2. In order to remove his doubt, the 1.0. of the case was summoned to clarify the position. On the next day, the statement of Shri Om Parkash, Investigating Officer was recorded. He stated that originally in the report u/s 173 Cr.P.C. both the accused persons namely, Hari Dayal and Baldev Kumar were shown in column no. 4, but subsequently it transpired that there was no sufficient evidence against accused Baldev Kumar. His name was thus scored off from column no. 4 and shown in column no. 2. However, as this fact was not mentioned in the report itself, he sought time to enable him to file a supplementary report. The learned Metropolitan Magistrate granted the permission. On the adjourned hearing, the learned A.P.P. submitted that u/s 173(3) a supplementary challan can only be filed, when after filing the challan in Court, the 1.0. obtains further additional evidence in respect of an offence. This is not the case here. There is already more than sufficient evidence against accused Baldev Kumar and as such the supplementary challan cannot be entertained. The learned Metropolitan Magistrate after hearing A.P.P. and the counsel for the accused, reviewed his previous order and refused to accept the supplementary challan.

(3) On consideration of the report and the statements of the witnesses recorded under Section 161 Cr.P.C. during the course of the investigation, the learned Metropolitan Magistrate concluded that the accused Baldev Kumar appears to be a kingpin and the brain behind the illegal activities falling within the purview of offences punishable under Sections 420/109 read with Sections 417/419 Indian Penal Code . Accused Hari Dayal was also held liable for the offence under Sections 417/419 Indian Penal Code . Accordingly, the charges under the said

offences were framed against both the accused. Hari Dayal accused pleaded guilty to the charge. After the consideration of report of Probation Officer, he was given the benefit of Section 4 of the Probation of Offenders Act and released on probation on his executing a bond in the sum of Rs. 2000.00 and to keep peace and be of good behavior for a period of one year.

(4) Against the order of charge, Baldev Kumar filed a revision petition in the court of the Sessions Judge, Delhi. Shri S.C. Jain, Addl. Sessions Judge on perusal of the report and on consideration of the arguments did not find any illegality or irregularity in the order of the trial court. He dismissed the revision petition and sent the case back to the court of Addl. Chief Metropolitan Magistrate for trial. It is against this order Shri Baldev Kumar has filed the petition u/s 482 of the Code Criminal Procedure praying for the quashing of the impugned order of the learned Addl. Sessions Judge, New Delhi.

(5) The main contention of the learned counsel for the petitioner is that in the report u/s 173, Cr.P.C. the name of the petitioner was shown in column no. 2 as there was no reliable evidence against him. Without recording any additional evidence, the learned trial court acted illegally in summoning and framing the charge against the petitioner. The courts below ignored to follow the basic principles of Section 319 of the Code of Criminal Procedure applicable to the facts of this case and took recourse to Section 190(l)(b) of the Code. This has resulted into gross miscarriage of justice and can be remedied only by this Court. The submission of the learned counsel for the State, on the other hand, is that the learned lower court applied its mind to the facts disclosed in the report itself and came to the conclusion that a prima facie case stands established against accused Baldev Kumar. Merely because his name is shown in column no. 2. will not debar the Court from taking cognizance of the offences against him also. On that score, the accused was rightly charged.

(6) I have given my careful consideration to the rival contentions of learned counsel for the parties. Prima facie, I am of the opinion that there is much substance in the submission of the learned counsel for the petitioner. It is well settled that there is nothing to prevent the court from permitting the prosecution

depending upon the merits of the case and interest of justice to carry on further investigation even after a charge sheet has been filed under Section 173(1) of the Code of Criminal Procedure and the Court has taken cognizance of the offence. In this case, in order to clarify the doubts as to whether there exists any evidence against Baldev Kumar of that his name has wrongly been struck off from column no. 4, the Investigating officer was summoned and examined. Shri Om Parkash the investigating Officer of this case stated on oath that during the course of investigation, he has not been able to find or collect any worthwhile evidence against the accused Baldev Kumar and for that reason his name was rightly scored off from column no. 4 and entered in column no. 2. On that basis, he sought the permission to file the supplementary challan which permission was allowed but later on declined on the suggestion of the learned A.P.P. From the perusal of the report, I find that the court below went wrong in relying on the confessional statement of the co-accused Hari Dayal, to frame a charge against the petitioner. Prima facie, the court cannot act upon the confessional statement of the co-accused unless and until the said statement finds corroboration in material particulars by independent evidence. There is no independent evidence what to talk of any evidence against the petitioner. In such a situation, the only provision under which the Magistrate could proceed was Section 319 Cr. P.C. which lays down :-

'(1)Whether in the course of any enquiry into, or trial of, an offence, it appears from the evidence 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.'

(7) It happens sometimes that a Magistrate hearing a case against certain accused finds from the evidence that some person, other than the accused before him is also concerned in that very offence or in a connected offence. This provision enables the court to call the accused and join him in the proceedings. However, the court can proceed against such a person under this Section only if there is some evidence to show that the same person has committed an offence of which the court can take cognizance. In the absence of any such evidence, such person cannot be summoned as a coaccused.

(8) Adimttedly, for want of reliable and cogent evidence by the Police, the name of the petitioner was shown in column no. 2. The learned lower court has not recorded any evidence on the basis of which it could be said that the petitioner also appears to have committed any offence. Prima facie, the order of the Metropolitan Magistrate in this view of the matter is based on no evidence.

(9) Learned counsel for the petitioner in support of his submission relied upon an unreported judgment of this court in criminal revision no. 37/87 re : Brahm Singh vs. the State, decided by Malik Sharief-Uddin J. on 9-4-1987, wherein under similar circumstances, the order of the learned lower court in summoning the accused whose name was shown in column no. 2, was set aside.

(10) Agreeing with the said conclusion, I have no hesitation to allow the petition. Ordered accordingly. The order of the learned Magistrate dated 24-2-87 and that of the learned Addl. Sessions Judge, dated 25-4-1987 whereby the accused was summoned to stand trial for the commission of an offence u/s 420/109 read with Section 417/419 Indian Penal Code . in hereby quashed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com