

Abdulla Vs. State of Kerala

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Court : Kerala

Decided On : Sep-12-2006

Reported in : 2007CriLJ871; 2006(4)KLT395

Judge : K.T. Sankaran, J.

Acts : Indian Penal Code (IPC) - Sections 279 and 304A; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 319, 319(1), 319(4) and 482; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 351; Code of Civil Procedure (CPC) - Sections 88

Appeal No. : Crl. M.C. No. 808 of 2004

Appellant : Abdulla

Respondent : State of Kerala

Advocate for Def. : M.A. Abdul Hakhim, Adv. and; K.G. Bhaskaran, Public Prosecutor

Advocate for Pet/Ap. : P.K. Muhammed, Adv.

Judgement :

ORDER

K.T. Sankaran, J.

1. The Second respondent Ajithkumar is the sole accused in C.C. No. 545 of 2001, on the file of the court of the Chief Judicial Magistrate, Kasaragod. The offences alleged against him are under Sections 279 and 304A of the Indian Penal Code. The allegation against the accused is that on 30.9.2001 at about 7 p.m., while he was driving the car, bearing Registration No. KA-2-MB-555, it hit against the bicycle on which the victim boy was riding. The boy fell down and sustained injuries and later, succumbed to the injuries.

2. On the side of the prosecution, PWs.1 to 3 were examined. PW.1 stated that he saw the incident. PW.2 is also an eye witness and he stated that the incident took place due to the rash and negligent driving of the driver of the vehicle. But, PW.2 stated that he did not see the driver properly. PW.3, who is the petitioner in this Crl. M.C., is the owner of the vehicle. He admitted in evidence that the car belongs to him and that he came to know that the car was involved in an accident on 4th or 5th October, 2001. He further stated that on 30.9.2001 at about 7.30 p.m., the accident took place. It is also stated by him that on 30.9.2001 he drove the vehicle. He denied that the accused drove the vehicle on the date of the accident. He also stated that he does not know the accused and that at the time of the accident, the vehicle was at Bangalore. He concluded by saying that while he was driving the vehicle, no accident took place. PW.3, the petitioner herein, was declared hostile and he was cross examined.

3. PW.3 was examined on 8.3.2004. After his examination was over, the learned Magistrate passed an order on the same date, which reads as follows:

Accused present. Village Officer is present. NBW to CWI. Fresh summons to CW.4 and 5 by post. CW. 10, the owner of the vehicle is examined. From his evidence it is made clear that on the date of accident he was driving the vehicle and he has not engaged the accused for driving the vehicle. He also admitted in evidence that he came to know about the accident. Hence I find that CW.10 is also to be impleaded in this case as accused. He is impleaded as accused No. 2. Summons to PW. 1 and PW.2. A2 is released on bail. He should be present next time. Posted to 5.4.2004.

This order dated 8.3.2004 is under challenge in this Crl. M.C.

4. The learned Counsel for the petitioner contended that the learned Magistrate was not justified in arraying the petitioner as accused No. 2. According to him, the order is illegal and it requires to be set aside invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure. He also submitted that the powers vested with the Court under Section 319 of the Code of Criminal Procedure do not warrant an order like the one impugned in this CrI. M.C.

5. Section 319 of the Code of Criminal Procedure provides that where, in the course of any inquiry into, or trial of, offence, it appears from the evidence that any person not being the accused has committed an 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. Sub-section (4) of Section 319 of provides that where the Court proceeds against any person under Sub-section (1), then the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard. Section 319 of the Code of Criminal Procedure, 1973 corresponds to Section 351 of the Criminal Procedure Code, 1898. The Law Commission in its 41st Report recommended as under:

It happens sometimes, though not very often, 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. It is only proper that the Magistrate should have the power to call and join him in the proceedings. Section 351 provides for such a situation, but only if that person happens to be attending the court. He can then be detained and proceeded against. There is no express provision in Section 351 for summoning such a person if he is not present in court. Such a provision would make Section 351 fairly comprehensive, and we think it proper to expressly provide for that situation, (para 24.80).

About the true position under the existing law, there has been difference of opinion, and we think it should be made clear. It seems to us that the main purpose of this particular provision is, that the whole case against all known suspects should be proceeded with expeditiously, and convenience requires that cognizance against the newly added accused should be taken in the same manner

as against the other accused. We, therefore, propose to re-cast Section 351 making it comprehensive and providing that there will be no difference in the mode of taking cognizance if a new person is added as an accused during the proceedings.' (Para 24.81).

Interpreting the scope and ambit of Section 319 of the Code of Criminal Procedure, the Supreme Court in *Kishun Singh v. State of Bihar* : 1993 CriLJ1700 held thus:

On a plain reading of Sub-section (1) of Section 319 there can be no doubt that it must appear from the evidence tendered in the course of any inquiry or trial that any person not being the accused has committed any offence for which he could be tried together with the accused. This power, it seems clear to us, can be exercised only if it so appears from the evidence at the trial and not otherwise. Therefore, this sub-section contemplates existence of some evidence appearing in the course of trial wherefrom the Court can *prima facie* conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named by the police...

6. The Supreme Court in *Michael Machado and Anr. v. Central Bureau of Investigation and Anr.* : 2000 CriLJ1706 considered the scope of Section 319 of the Code of Criminal Procedure and held thus:

The basic requirements for invoking the above Section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, had committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

7. The basic requirement of Section 319 of the Code of Criminal Procedure is that apart from the accused person already in the array of accused, one person or more than one person are also involved in the offence and that the Court trying the case comes to the conclusion that such persons are also involved. The accused already in the party array must be a co-accused if Section 319 is invoked and an additional accused is added in the array of accused. In the case on hand, the offences are under Sections 279 and 304A of the Indian Penal Code. There is no case for the prosecution that two persons drove the vehicle at the time of accident. Therefore, there cannot be more than one accused in the case. After investigation, the police laid charge against the second respondent, the sole accused. The evidence of PW.3, the petitioner herein, does not disclose that he committed the offence. He denied that any accident took place on the date on which the accident is alleged to have taken place. He might have stated in evidence something which is not true. It may also be true that appropriate proceedings could be initiated against him for tendering false evidence. But, that is not a ground for invoking Section 319 of the Code of Criminal Procedure and making such witness an accused. The jurisdiction of the Court under Section 319 does not extend to adopting such a course. If the petitioner is also made an accused, that will not advance the cause of justice. On the other hand, it would further weaken the prosecution case.

8. The case being one under Sections 279 and 304A of the Indian Penal Code, normally, there cannot be more than one accused in an accident of this type. There is no case that two persons drove the vehicle. An enquiry as to who among the accused persons drove the vehicle at the time of accident is not an enquiry which is contemplated in the trial. An enquiry as in an interpleader suit under Section 88 of the Code of Civil Procedure is not contemplated in the trial of a case under the Code of Criminal Procedure.

9. For the foregoing reasons, I am of the view that the court below committed an error in passing the order impugned making the petitioner as the second accused in the case. The order dated 8.3.2004 to that extent is quashed. If the court comes to the conclusion that the petitioner - PW.3 - has tendered false evidence, this order will not preclude the Court from taking appropriate action against him.

The Criminal Miscellaneous Case is allowed as above.

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