

Mahendra Kumar Vs. State of Rajasthan

Mahendra Kumar Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/758908

Court : Rajasthan

Decided On : Jan-03-1984

Reported in : 1984WLN(UC)70

Judge : S.S. Byas, J.

Appeal No. : S.B. Criminal Misc. Application No. 66/83

Appellant : Mahendra Kumar

Respondent : State of Rajasthan

Disposition : Application allowed

Judgement :

S.S. Byas, J.

1. This application has been filed by Mahendra Kumar under Section 482 read with Sections 397 and 401, Cr. PC for quashing the order of the learned Chief Judicial Magistrate, Chittorgarh dated October 7, 1982 passed under Section 319 Cr. PC summoning the petitioner to face trial for offences punishable under Sections 420, 467 and 471/120, IPC. The police submitted a challan against Bhanwarlal and Basantkumar for offences punishable under Sections 420, 467 and 471, IPC.

2. Briefly stated the case set up by the prosecution is that they prepared a forged registration certificate of a Primer Safari Saloon purporting to have been issued by the District Transport Officer, Chittorgarh. The vehicle was allotted Registration No. R.J.H. 1224 under the forged certificate of registration. The learned Chief Judicial Magistrate, after hearing the prosecution and the accused-persons, passed an order on June 16, 1977 by which accused Bhanwarlal was discharged. The case thereafter lingered on against accused Basantkumar. On June 15, 1982, the Additional Public Prosecutor submitted an application in the court-below to add and implead Mahendra Kumar as an accused because it was he, who had sold the vehicle to the fictitious person and managed to procure false registration certificate. The learned Chief Judicial Magistrate by his impugned order dated October 7, 1982 allowed the aforesaid application and summoned the petitioner Mahendra Kumar to face trial for offence as mentioned at the very outset.

3. The point involved is a very short one, viz. whether the Chief Judicial Magistrate could pass such an order under Section 319, Cr. PC without taking evidence. Obviously, he had taken cognizance of the offence on April 18, 1977. The co-accused Bhanwarlal was discharged on 16-6-1977. The order of the discharge could not be passed unless the cognizance was taken and the parties were heard. The order of the discharge shows that the Magistrate had taken cognizance and applied his mind to the facts of the case. Thereafter, the case lingered on for framing the charge against the co-accused Basantkumar. No order for framing the charge could be passed against him for one and other reason.

4. The Additional Public Prosecutor had submitted an application under Section 319, Cr. PC. only in the course of trial of the offences. The power under Section 319, Cr. PC to proceed against any other person not being the accused can be exercised only when evidence has been recorded. If no evidence has been recorded, the court has no power to proceed under Section 319, Cr. PC against the person, who is already not an accused. The scope and ambit of Section 319, Cr. PC and the powers of a court thereunder have been elaborately and exhaustively dealt with by their Lordships of the Supreme Court and this Court. The pronouncements of the Supreme Court were referred to by this Court in Sheoram Singh etc. v. State of Rajasthan 1982 Raj. Law Reporter 550. It is thus now a well

settled position in law that under Section 319(1) Cr. PC, a court (which includes all courts whether of a Magistrate or a Sessions Judge) is competent and has power to add any person and to summon him to stand trial, if the evidence recorded during enquiry or or trial discloses his involvement in the commission of crime. The recording of evidence is a condition precedent to proceed under Section 319. Cr. PC. The evidence of a single witness may be sufficient to enable the court to issue process against a person under Section 312(1), Cr. PC. But the court can not proceed under Section 319(1), Cr. PC unless and until some evidence has been recorded including the involvement of the person, who is to be added and summoned for trial.

5. In the instant case, no evidence was at all recorded. The Chief Judicial Magistrate had, therefore, no power under Section 319, Cr. PC and to pass the impugned order against the petitioner Mahendrakumar. The petition must, therefore, succeed.

6. In the result, the application of Mahendrakumar is allowed and impugned order dated October 7, 1982 is quashed. The case will go back to the learned Chief Judicial Magistrate, Chittorgarh. After recording evidence if he feels, he should take cognizance against petitioner Mahendrakumar and to summon him for trial he will pass an appropriate order to that effect. This judgment will not stand in his way to prevent him from exercising his discretion under Section 319(1), Cr. PC.