Toga and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-02-1983

Reported in : 1983WLN382

Judge : S.S. Vyas, J.

Appeal No. : S.B. Criminal Revision No. 201/83

Appellant : Toga and ors.

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

S.S. Vyas, J.

1. This revision by twenty persons is directed against the order of the learned Sessions Jurtge, Balolra dated June 16, 1983 passed in Criminal Case No. 56 of 1981 whereby cognizance for offences under Sections 147, 148, 323, 324, 325, 326 and 307 read with Section 149, IPC was taken and process was issued to them to stand trial.

2. It would be proper to briefly resume the facts and circumstances giving rise to this revision.

3. At about 9 a.m. on 6-8-81, a mob of nearly twenty four persons went to the field to Kamal and started ploughing it. Kamal, his brothers Sattar and Bilal went to forbid them. The mob became violent and made an assault on the complainant-party. The aforesaid three persons along with one Gafoor were belaboured. A report of the occurrence was lodged at Police Station, Bramer on the same day. The police registered a case and proceeded with investigation. On the completion of investigation, the police submitted a challan against seven persons in the court of Munsif and Judicial Magistrate, Banner. Since, the offence under Section 307, IPC was exclusively triable by a court of Sessions, the case was committed for trial. The learned Sessions Judge framed charges under Sections 307, 147, 148, 326, 325, 324 and 323 read with Section 149, IPC against the seven accused-persons. On 16.6.83, P.W. I Stattar was examined by the prosecution. When he was under cross-examination, the Public Prosecutor submitted and application under Section 319, Cr.P.C. before the learned Sessions Judge, praying therein that the twenty persons (who are the petitioners in this Court) be summoned to face trial. The cross-examination of the witness was defened at the request of the defence counsel. The learned Sessions Judge by his order dated June 16, 1983 allowed the said application, took cognizance against the petitioners and issued bailable warrants to secure their presence. Aggrieved against the said order, the petitioners have preferred this revision petition.

4. I have heard the earned Counsel appearing for the petitioners and the Public Prosecutor. I have also carefully gone through the record of the case.

5. The scope and ambit of Section 319, Cr.P.C. and the powers of a Court there under have been elaborately and exhaustively dealt with by their Lord hips of the Supreme Court in Jogendra Singh and Anr. vs. State of Punjab and Anr. 1979 (1) S.C.C. 345, and Municipal Corporation of Delhi vs. Man Mohan Singh and Ors. 1983 S.C.C. (Cri.) 115. The law laid down in these authorities was followed by this Court in Sheoram Singh atc. v. State of Raj as than 1982 R.L.R. 550. As a result of the pronouncements made in the above cases, it is now a well settled position in law that under Section 319(1), Cr.P.C. a court (which includes ail courts whether of a Magistrate or a Sessions) is competent and has powers to add any person and to summon him to stand trial, if the evidence recorded during enquiry or trial

discloses his involvement in the commission of crime. The evidence of a single witness has been held to be sufficient to enable the court to issue process under Section 319(1) Cr. PC.

6. Keeping in view this settled position of law, earned Counsel appearing for the petitioners challenged the impugned order on two gorounds:

(i) During trial, the prosecution examined only one witness Sattar (PW. 1). But his statement is incomplete because cross-examination was deferred. As such, the statement being incomplete, cognizance could not be taken on its basis against the petitioners.

(ii) The impugned order is not a speaking order. The learned Sessions Judge has merely mentioned therein that the application filed by the Public Prosecutor was accepted. This is not the proper compliance of the provisions of Section 319 Cr. PC.

7. In reply, the learned Public Prosecutor supported the impugned order and submitted that it was perfectly legal. I have taken the respective contentions into consideration.

8. Taking the first contention first, a perusal of the record shows that the prosecution examined only one witness Sattar (PW 1.) The examination in-chief was over and cross-examination was taken up by the defence counsel. The cross-examination, however, remained incomplete and was deferred on the request of the learned defence counsel.

9. It is true that the statement of a witness in order to become evidence has to pass through three stages viz(i) examination-in-chief (ii) cross-examination and (iii) re-examination. Section 138 of the Evidence Act lays down the procedure as to how a witness is to be examined. It envisages the aforesaid three stage. It speaks that the witness shall be first examined-in-chief, then (if the adverse party so desires) cross-examined and lastly (if the party calling him so desires) re-examined. It is apparent from a bare reading of this section that the right of cross-examination is there, but it is there only when the adverse party desires to

exercise it. If the adverse party desires to cross-examine the witness that privilege has to be granted to it. But when the adverse patty does not desire to cross-examine the witness, it cannot be said that the right of cross-examination has been denied to it or that the statement is not complete for Want of cross-examination.

10. In the instant case, the examination-in-chief of PW. 1 Sattar was complete and the learned defence counsel took up the cross-examination. After putting some questions in the cross-examination to the witness, the learned defence counsel made a request to defer the cross-examination in view of the application of the prosecution under Section 319, Cr. PC. In the context of these circumstances, it cannot be maintained that the right of cross-examination was denied. If the adverse party chooses not to cross-examine the witness despite an opportunity being granted lo it, it cannot be said that the statement is not complete for the purpose of applying Section 309, Cr. PC. The adverse party cannot be compelled to cross-examine a witness. All that the law requires under Section 138 of the Evidence Act is to afford an opportunity for cross examination. That opportunity was granted & cross-examination did take place to some extent. It could rot be completed and was deferred for a later stage on the request of the learned defence counsel. The prosecution or the trial court can not be saddled within responsibility for the cross-examination remaining incomplete. The contention that since the statement of P.W. I Sattar was not complete, it can not be used to take cognizance against the petitioners is thus devoid of force and holds no ground.

11. Coming to the accused contention, it was argued that impugned order is not in speaking terms. The learned Sessions Judge should have recorded reasons as to how and why he was taking cognizance of the offences against the petitioners and issuing process to make them to stand trial. The contention is not without force.

12. The impugned order dated June 16, 1983 reads as under:

Eqkyfteku nkslw] xqyke bZeku] vCnqyk] mej gkde] ,oa vehj cj vekur e; muds odhy Jh oa'kh/kj ,M- mifLFkr A

ih ih Jh }kjkdkizlkn tks'kh mifLFkr A

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vkt vfHk;kstu Ik{k dh rjQ ls lk{kh lrkj ih Mcyw&1 ds c;ku dyec) djus vkjEHk fd;s x;s A phQ iwoZ gksus ds i'pkr yksd vfHk;sktd Jh }kjdknkl tks'kh us ,d vkosnu Ik= izLrqr dj fuosnu fd;k fd lk{kh lRrkj ds gq, c;kuks es 'ks'k 20 eqyfteku }kjk Hkh vijk/k djuk ,oa muds f[kykQ Hkh izksekQslh dsl cuuk ,oa mlds f[kykQ Hkh izlgku fd;s tkus gsrq fuosnu fd;k A lk{kh lRrkj ds c;ku dk voyksdu fd;k x;k A leLr ifjfLFkfr;ks dks ns[krs gq, fo}ku ih ih }kjk izLrqr izkFkZuk Ik= Lohkdkj fd;k tkdj nj[okLr es ntZ 'ks'k eqyfteku 1 lksuk iq= rkyc 2vej iq= lskuk 3 lU/kq iq= bLekbZy 4 der iq= lU/kq 5xqekuk iq= rkyc 6bnjksl iq= ,glku 7lyhe iq= ,glku 8vjuk iq= ,sglku 9 tkuw iq= uthj 10eqghe iq= ulhj11oyh iq= ulhj12gkth oehu iq= jetku13xqykc iq= gkth vehj 14uoyk iq= vCnqYyk 15lsiy iq= flok16gkth iq= lkdj17vjck iq= gkth18ljhQ iq= flok19flYyk iq= lkdj ,oa cnk;k iq= fldk ds f[kykQ Hkh izlk/ku fy;k tkrk gS Avr% mijksDr 20 eqyfteku dks tfj;s okj UV tkeUuh 10]000@& ds ryc fd;k tkos A

lk{kh lRrkj ds c;ku egiq= j[ks x;s AftUgs vkbUnk is'kh ds fy, ikcUn fd;k x;k A xokg jktwflag vkt gkftj gS tks vkbZUnk rych ij gkftj vkos A

vr% izdj.k okLrs rych nks'k eqyftekug ds rkjh[k 14&7&83 dks is'k gks A

13. A bare perusal of the impugned order makes it abundantly clear that the learned Sessions Judge recorded no reasons, which induced him to take cognizance and issue process against the petitioners. All that he wrote is:-

lk{kh lRrkj ds c;ku dk voyksdu fd;k x;k A leLr ifjfLFkfr;ks dks ns[krs gq, fo}ku ih ih }kjk izLrqr izkFkZuk&Ik;= Lohdkj fd;k tkdj nj[okLr es ntZ 'ks'k eqyfteku---ds f[kykQ Hkh izla/kku fy;k tkrk gS A

This certainly is not a faithful compliance of the provisions of Section 319, Cr. P.C.

14. Section 319 Cr.P.C. uses the words 'it appears from the evidence'. The use of word 'appears' is deliberate and meaningful. It connotes that the court must state reasons as to how it appears from the evidence that the persons not in array of the accused, are to be summoned to take trial. Again the words, 'for the offence, which he appears to have committed' in Section 319, Cr.P.C. cast a duty on the court to record as to what offence appears to have been committed by that person against

whom the cognizance is to be taken and process is to be issued. The learned Judge has not recorded any reasons as to how it appeared from the evidence of P.W. I Sa