

Nathu Lal Vs. State and ors.

Nathu Lal Vs. State and ors.

SooperKanoon Citation : sooperkanoon.com/763146

Court : Rajasthan

Decided On : Jul-14-2006

Reported in : RLW2006(4)Raj3479; 2006WLC(Raj)UC402

Judge : Harbans Lal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173(8), 319, 319(1), 319(4) and 482; Indian Penal Code (IPC) - Sections 120B, 304B and 498A

Appeal No. : S.B. Criminal Misc. Petition No. 250 of 2006

Appellant : Nathu Lal

Respondent : State and ors.

Advocate for Def. : Arun Sharma, PP

Advocate for Pet/Ap. : Poonam Chand Sharma, Adv.

Disposition : Petition dismissed

Judgement :

Harbans Lal, J.

1. The instant petition Under Section 482 Cr. P.C. has been filed by petitioner Nathulal against the order dated 17.12.2005 passed by the learned Additional Sessions Judge (Fast Track) Bandikui, District Dausa in Sessions No. 8/2005

whereby the application filed by the petitioner on 14.11.2005 Under Section 319 Cr. P.C. has been rejected.

2. The relevant facts giving rise to this petition and necessary for its disposal are that the petitioner-complainant lodged a first information report at P.S. Bhanpur on 27.8.2004 whereupon a criminal case being F.I.R. No. 325/2004 came to be registered for offences Under Sections 304-B and 120-B I.P.C.

3. After investigation, the charge-sheet was filed against accused Jagdish Prasad and investigation was kept pending against Smt. Ghisi Devi, accused non-petitioner No. 2 Under Section 173(8) Cr. P.C. It being a case exclusively triable by the court of Sessions was committed for trial. The trial court after framing charges against accused Jagdish Prasad recorded statements of witnesses. Thereafter, application Under Section 319 Cr. P.C. was filed by the petitioner on 14.11.2005 for arraigning Smt. Ghisi Devi and Sita Ram (a) Siyaram, accused non-petitioners No. 2 and 3, respectively as additional accused which, as indicated above, was rejected on 17.12.2005. However, the trial court on the same day held accused Jagdish Prasad guilty and after convicting him for offences Under Sections 498-A and 304-B I.P.C. sentenced him to simple imprisonment for 2 years and a fine of Rs. 500/-, in default of payment of which, to further undergo simple imprisonment for 15 days for the offence Under Section 498-A I.P.C. and for the offence Under Section 304-B I.P.C. he was sentenced to simple imprisonment for 7 years. The substantive sentences were made to run concurrently.

4. Being aggrieved by the order dated 17.12.2005 rejecting application dated 14.11.2005 moved by the petitioner, the petitioner has challenged the said order by way of this petition.

5. Learned Counsel for the complainant-petitioner has contended that the impugned-order is contrary to law and facts on record. The court below has not properly considered the averments and the evidence on record. The police did not file charge-sheet against Smt. Ghisi Devi and Sita Ram @ Siyaram as it joined hands with the accused. The names of both the accused are mentioned in the F.I.R. and there is specific allegation of committing murder against them. As per

statement of PW-1, accused Jagdish Prasad and Sita Ram @ Siyaram had both come on a motor-bicycle to the village of the petitioner and demanded dowry of Rs. 1 lac. It is, therefore, urged that the impugned-order dated 17.12.2005 may be quashed and Smt. Ghisi Devi and Sita Ram @ Siyaram may be arraigned and summoned as accused and they may be made to face the trial.

6. Learned Public Prosecutor has supported the order of the learned court below.

7. I have considered the submissions made at the bar and have perused the statements of the witnesses recorded during the trial.

8. It is true as held in Smt. Rukhsana Khatoon v. Sakhawat Hussain and Ors. : 2002 CriLJ2969 that the persons named in the F.I.R. as accused but not charge-sheeted can be summoned and arraigned as additional accused Under Section 319 Cr. P.C. particularly when the evidence of the prosecution witnesses corroborates their role in the alleged incident.

9. Section 319 of the Code of Criminal Procedure, 1973 reads as follows:

319(1) Where, in the course of any inquiry 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.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid....

10. It is plain from the perusal of the aforesaid provision that the court has been conferred discretionary power to summon any person as an accused provided it is satisfied that the evidence or circumstances of the case disclose prima-facie that a person, not brought up for trial should be arraigned as an accused and must be made to face the trial. This power can be exercised at any stage of the proceedings.

11. It has been held by the Hon'ble Apex Court in *Shashikant Singh v. Tarkeshwar Singh and Anr.* (: 2002 CriLJ2806 that trial of newly added accused on conclusion of main trial can be held. Requirement of Sub-section (1) of Section 319 Cr. P.C. that persons summoned could be tried together with the accused already facing trial but this provision is directory whereas required under Sub-section (4) of Section 319 Cr. P.C. regarding holding do novo trial of such person is mandatory.

12. In view of the law propounded by the Hon'ble Apex Court in the aforesaid case, the view expressed by this Court in *Samartha Ram v. State of Rajasthan and Ors.* : RLW 2002(2) Raj. 1328, *Chittar and Ors. v. State of Rajasthan* 1998 RCC 89 and *Panchu Lal v. State of Rajasthan* RLW 1998(3) Raj. 1992 stands impliedly over ruled.

13. In *Michael Machado and Anr. v. Central Bureau of Investigation and Anr.* 2000 Cr.L.J. 1706 (SC), the Hon'ble Apex Court has observed that the power under Section 319 Cr. P.C. is discretionary. There is no compelling duty of the court to proceed against other persons. It is not that the court should turn against another person whenever it comes across some evidence connecting that another person also with the offence. The court should judicially exercise the power keeping a conspectus of the case, including the stage to which the trial has proceeded already and the quantum of evidence collected till then as also the amount of time which the court has spent for collecting such evidence. If there is prima-facie case and there is reasonable prospect of conviction of the person being arraigned as additional accused for the alleged offences, the court may arraign and summon such person as additional accused to face the trial along with the accused already facing trial if the trial is still pending and in case the trial has already concluded, as in this case, such persons may be tried separately as has been held in the case of *Shashikant Singh v. Tarkeshwar Singh and Anr.* (supra).

14. It has been observed in *Harihar Chakravarty v. State of West Bengal* : AIR 1954 SC266 that the revisional jurisdiction is not to be lightly exercised when it is invoked by a private complainant.

15. While dealing with the scope and object of the revisional jurisdiction, the Apex Court has observed in *Jagannath Choudhary v. Ramayan Singh* : 2002 CriLJ2945

that the object of conferring upon superior courts revisional jurisdiction is just as a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice.

16. After examining the statements of the witnesses trial court has observed that there is no mention in the F.I.R. Exh.P-1 that Sita Ram @ Siyaram and Smt. Ghisi Devi made a demand of dowry. The court has further found that in the F.I.R. F.xh.P-1 besides accused Jagdish, Ramsiram, Ghisi Devi, Siyaram, Chetram, Muthri Devi and Rattiram committed the murder of Jagni but the said allegation has not been supported by the witnesses in their court statements. The allegation that Jagdish and Sita Ram & Siyaram both came on a motor-bicycle to the village of the petitioner is also not supported by the witnesses in their statements in court.

17. It is well settled that the powers vested in the High Court Under Section 482 Cr. P.C. are to be exercised sparingly and with circumspection and to prevent the abuse of the process of the court or for securing ends of justice.

18. Thus, a perusal of the statements of the witnesses along with the order impugned makes it abundantly clear that there is no error, illegality or impropriety in the order passed by the learned court below. There is neither any abuse of the process of the court nor there is any reasonable prospect of conviction of the person sought to be arraigned as accused. So, no case for interference in exercise of the inherent jurisdiction of this Court Under Section 482, Cr. P.C. is made out.

19. Consequently, this petition being devoid of merit and substance deserves to be and is hereby dismissed.