

AamIn Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jul-13-2004

Reported in : RLW2005(1)Raj249; 2004(4)WLC175

Judge : Ashok Parihar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 319

Appeal No. : S.B. Criminal Revision Petition No. 66 of 2004

Appellant : Aamin

Respondent : State of Rajasthan and ors.

Advocate for Def. : Jainendra Jain, Public Prosecutor and; R.S. Sharma, Adv.

Advocate for Pet/Ap. : M.K. Kaushik, Adv.

Judgement :

Ashok Parihar, J.

1. Incident alleged to have taken place on 1.10.2001 at 6.30 AM. The FIR was lodged on the same date at 9.45 AM against 43 persons for offence under Sections 307, 302, 326 IPC. The Police, after investigation, filed chargesheet against 37 accused persons. Subsequently during trial an application under Section 319 Cr.P.C. was filed by the Public Prosecutor for impleading four present

accused respondents also as accused in the present case. The application was dismissed by the trial court vide order dated 5.12.2003. Hence the present revision petition filed by the complainant challenging the above order dated 5.12.2003 passed by the trial court.

2. Learned counsel for the petitioner while referring to the First Information Report as also the statements of three injured witnesses and one eye-witness before the police as also the trial court during trial, submitted that all the four accused respondents have been named not only in the FIR, but also the statements of the witnesses. All the accused respondents were carrying arms and they were actively involved in the incident so far as causing gun shot injuries to the injured persons as alleged in the FIR as also in the statements of the witnesses. It has also been submitted that the plea of alibi as taken by the accused respondent, can only be proved by the respondents during trial and even the police could not have excluded them from the list of accused persons on the ground of alibi at the time of filing chargesheet. Learned counsel for the respondents has on the other hand submitted that the trial court has passed a reasoned order after considering the entire material on record.

3. After hearing learned counsel for the parties, I have carefully gone through the material on record as also the impugned order.

4. A bare perusal of the impugned order would show that the trial court was mainly impressed by the plea of alibi as also the impression that the application has been filed just to delay the trial. As has been referred by the learned counsel for the petitioner, the FIR and the statements of the witnesses so referred and read before the court show the active involvement as alleged, of all the four accused respondents.

5. Learned counsel for the petitioner has also submitted that so far as accused respondent Khurshid is concerned, though he was in Military service, but at the relevant time he was under suspension. Be that as it may, even the plea of alibi as taken by any of the accused persons can only be proved by them in their defence. The court has only to see whether as per the First Information Report, the injury reports, the statements

recorded by the police as also the court, some prima facie case is made out against the accused persons for the offence alleged against them. No conclusive finding on merits could be and should have been given by the court at this stage. In the present case it can not be said that no prima facie case is made out against the accused respondents so as to take cognizance.

6. After having considered the entire material on record, in the facts and circumstances of the present case, in my opinion, the impugned order dated 5.12.2003 passed by the trial court cannot be sustained in the eyes of law and the same is hereby set aside. The trial court is now directed to pass fresh order on application under Section 319, Cr.P.C. filed by the prosecution taking note of the observations made above and proceed further in accordance with law. It goes without saying that the accused respondents have always an opportunity of defence at every stage of the trial.

7. The revision petition stands disposed of accordingly.