

Khet Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-27-2003

Reported in : 2003(2)ALT(Cri)14; RLW2004(1)Raj673; 2003(4)WLC394

Judge : H.R. Panwar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 319; Indian Penal Code (IPC) - Sections 307, 323 to 325 and 341

Appeal No. : S.B. Criminal Revision No. 326 of 2003

Appellant : Khet Singh

Respondent : State of Rajasthan

Advocate for Def. : S.S. Sharma, Public Prosecutor

Advocate for Pet/Ap. : Shambhoo Singh, Adv.

Disposition : Revision dismissed

Judgement :

H.R. Panwar, J.

1. This revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1873, has been filed against the order dated 2.4.2003 passed by the Additional Session Judge (Fast Track), Balotra in Sessions Case No.

22/2002, by which the learned court below dismissed the application filed by the petitioner under Section 319 Cr.P.C.

2. I have heard learned counsel for the petitioner and the learned Public Prosecutor for the State and also perused by the order impugned.

3. The facts and circumstances giving rise to this case, in succinct, are that on 28.4.2002, at about 3:30 a.m., Binraj Singh S/o Mangal Singh telephonically informed the police that at about 11:45 p.m. accused Pratap Singh and five-six other persons gave beatings to injured Khet Singh by Lathis and axe; he was lying unconscious and blood was oozing out from the injuries. On this telephonic information, the investigation ensued and on completion thereof, the police filed a challan against the accused for the offences under Section 307, 341, 323, 324, 325 of the Indian Penal Code. During pendency of the trial, an application under Section 319, Cr.P.C. was filed by the petitioner for impleading Pratap Singh and Smt. Chandra Kanwar also as accused on the basis of statement of injured Khet Singh which was further supported by the statement of Binraj Singh, Peer Singh, Sardar Singh, Hem Singh and Umed Singh as well as corroborated by the medical evidence which suggested that the injured was having simple and grievous injuries on his person caused by sharp and blunt objects. The said application was opposed by the accused on the grounds that the name of Smt. Chandra Kanwar does not find place in the FIR, the witnesses have given an exaggerated version of the incident, injured Khet Singh himself has stated in the application dated 29.4.2002 (Ex.D.5) that except Tan Singh, none gave beatings to him, and the complainant side wants to linger on the matter by naming out Pratap Singh and Smt. Chandra Kanwar, also, as the accused. The learned trial Court, after considering the facts and evidence on record, dismissed the said application under Section 319 Cr.P.C. Hence this revision.

4. The State has not challenged the order impugned, which was passed by the trial Court on the application moved by the petitioner. For invoking the power under Section 319 Cr.P.C., the condition precedent 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, has committed an

offence for which that person could be tried together with the accused already arraigned. The power conferred on the Court is discretionary as could be gathered from the words 'the Court may proceed against such person' and the discretionary power so conferred on the Court should be exercised only to achieve the criminal justice.

5. The Hon'ble Supreme Court, in Michael Machado and Anr. v. Central Bureau of Investigation and Anr. (1), held that the power conferred on the Court under Section 319 Cr.P.C. is only a discretion as could be discerned from the words 'the Court may proceed against such person.' It further held that unless the Court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction for the offence concerned, the Court should refrain from adopting such a course of action. Thus, it is clear that before Court exercises the power conferred under Section 319 Cr.P.C., the Court is required to satisfy that there that there is a reasonable prospect of the case as against the person sought to be arraigned as accused ending in conviction for the offence concerned.

6. In Harihar Chakravarty v. The State of West Bengal (2), the Hon'ble Supreme Court held that the revisional jurisdiction of the High Court is not to be lightly exercised when it is invoked by a private complainant.

7. It is settled law that the revisional power of High Court under Section 401 Cr.P.C. is discretionary which has to be exercised to correct miscarriage of justice, but whether or not there is justification to exercise or not to exercise such discretionary power, depends upon the facts and circumstances of each case. In Jagannath Choudhary v. Ramayan Singh (3), the Supreme Court held that the object or revisional jurisdiction, as envisaged under Section 401 Cr.P.C. is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of power precaution or apparent harshness of treatment, which has resulted on the one hand in some injury to the due maintenance of law or on the other hand in some undeserved hardship to the individuals. Where the Court concerned does not appear to have committed any illegality or material irregularity or impropriety in passing the impugned judgment

and order, the revision cannot succeed. The jurisdictional sweep of the process of the High Court under the provision of Section 401 Cr.P.C. is very much circumscribed. In the instant case, from the order impugned, it cannot be said that it would result in miscarriage of justice or there is a glaring defect in the procedural aspect or there being a manifest error on the point of law. It is settled law that the revisional jurisdiction is not to be lightly exercised but only in exceptional situations where justice delivery system requires interference in order to do substantial justice and to correct manifest illegality or to prevent gross miscarriage of justice.

8. Learned counsel for the petitioner submits that after passing the impugned order dated 2.4.2003, the trial court finally heard and decided the matter and the accused facing trial, viz. Tan Singh, was convicted for the offences he was charged with. Thus, there remains no trial pending before the trial court. The opening words of Section 319 Cr.P.C. are that '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, which such person could be tried together with the accused, the Court may proceed against such person for offences which he appears to have committed. Thus, from the plain language of the said Section, it is clear that at the stage in the course of any inquiry into, or trial of, an offence, the Court would consider that such person, not being an accused, has committed an offence, could be trial together writ accused who is already facing the trial before the court. Sub-section (4) of Section 319 Cr.P.C. provides that where the court proceeds against any person under Sub-section (1) then (a) the proceedings in respect of such person shall be commenced afresh, and the witness re-heard; (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry of trial was commenced. Sub-section (4) makes it clear that if a person was not arraigned as an accused, a de novo trial has to be held.

9. In the instant case, till the conclusion of the trial of the accused already facing the trial, the trial Court, on the basis of material, did not think it proper to proceed against the non- petitioners who are sought to be arraigned as accused by the component-petitioner. I have carefully gone through the statement of prosecution witnesses recorded by the trial Court and other relevant material. There are

material contradictions in the statement of the prosecution witnesses, the names of Pratap Singh and Smt. Chandra Kanwar do not find mention in the FIR; there is specific statement of the petitioner-complainant himself in Ex.D.5 that except accused Tan Singh, non gave beatings to him and though this document was on record at the time of filing the application under Section 319 Cr.P.C. yet it was not opposed by the complainant side; and there is exaggeration in the statement of the prosecution witnesses. It is settled law that the power under Section 319 Cr.P.C. are really extraordinary power conferred on the court and should be used very sparingly and with circumspection. While exercising the power under Section 319 Cr.P.C., the Court must have reasonable satisfaction that (i) from the evidence already collected, some other person, who is not arraigned as a accused in that case, has committed an offence, for which (ii) that person should be tried together with the accused already facing trial. Having considered the facts and circumstances in totality, in the instant case, both these conditions are not satisfied, warranting interference.

10. Keeping in view the limited scope of revision, that too by a private party, I am of the considered view that the impugned order cannot be said to be of exceptional cases warranting interference to correct miscarriage of justice. There is neither any glaring defect in the procedural aspect, nor any manifest illegality or perversity or error on the point of law. Hence, no case for interference is made out.

11. Consequently, the revision fails and is hereby dismissed.