

Ratan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-02-2001

Reported in : 2001(2)WLC309; 2001(1)WLN647

Judge : Arun Madan, J.

Appeal No. : S.B. Cri. Misc. Petition No. 1182 of 2000

Appellant : Ratan

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

Arun Madan, J.

1. This is criminal Misc. petition under Section 482 Cr. P.C. wherein the complainant petitioner (Ratan S/o Chouthi Jatav) has challenged the order of the learned trial Court whereby it has directed the prosecution to draw attention of the Court to the application filed under Section 319 Cr. PC, as and when the prosecution evidence is closed. The complainant further sought direction for firstly deciding final report in FIR No. 14/97 dated 4.5.2000 as regards Bane Singh prior to the conclusion of trial in Case No. 28/97.

2. It is the case of the complainant petitioner that under the impugned order the learned trial Court had rejected application under Section 319 Cr. P.C. for not taking cognizance against principal accused Bane Singh in FIR No. 14/97 for offences under Sections 147, 148, 149, 323, 341, 326 and 302 IPC, registered at PS Surot (Karauli) and that apart, though final report had been submitted by the police on 4.5.2000 before the CJM Hindaun City but no order in respect of approval or disapproval of final report has been passed by the Magistrate.

3. I have gone through the final report dated 4.5.2000 said to have been submitted before the Magistrate after further investigation having been made under Section 173(8) Cr. PC against Baney Singh, and have also perused the impugned order dated 24.5.2000 of the trial Court (Addl. Sess. Judge). A careful perusal of the order dated 24.5.2000 shows that the trial Court has not decided the prosecution's application under Section 319 Cr. PC for proceeding against other persons appearing to be guilty of offence, whereas it has deferred its decision under Section 319 Cr. PC asking the prosecution agency to draw attention of the Court after closure of its evidence. Hence in these circumstances I do not find that it is a case of either miscarriage of justice or abuse of process of law or in excess of jurisdiction of the trial Court or that the trial Court has failed to exercise its jurisdiction as regards consideration for invoking Section 319 Cr. PC.

4. It is trite law that under Section 319 Cr, PC the Court has ample power to proceed against persons not being the accused appearing to be guilty of offence and cognizance against such newly accused is deemed to have been taken in the same manner in which cognizance has first taken of the offence against the earlier accused obviously because of the fact that it deals with a matter arising out of the proceeding already instituted. It does not debar the Sessions Court from exercising its power under Section 319 Cr. PC to add any person for trial without there being a committal order against such person (See 1983 (1) SCC 1). In fact Section 319 Cr. PC covers post cognizance stage where during an inquiry or trial the involvement or complicity of a person/persons not named by the investigating agency has surfaced. It does also not only cover cases where despite name of a person figuring during investigation he is not sent up by the investigating agency but even the case where the complicity of such a person comes light for the first

time during the course of evidence recorded at the time of inquiry or trial. I have lent support from the dictum of law in *Kishan v. State* : 1993 CriLJ1700 followed in *Nisar v. State* : 1995 CriLJ2118 & *Rajkishor v. State* : 1996 CriLJ2523 . Since it is the evidence tendered during trial of the case if the offence is triable by a court of Sessions, therefore, as in the case at hand, material placed before the committing court cannot be treated as evidence collected during inquiry or trial (See *Ranjit v. State* : 1998 CriLJ4618 . In the Instant case as is evident from the impugned order, the prosecution evidence had yet to be completed and the recording of evidence of eye witnesses is still pending, in my considered view, the Additional Sessions Judge has committed no mistake of law in deferring consideration of invoking Section 319 Cr. PC. The learned trial Judge has rightly directed the prosecution to draw attention of the Court for invoking Section 319 Cr. PC only upon closure of its evidence.

5. No doubt, final report under Section 173(8) Cr. PC has been submitted by the police during the course of pending trial against other accused. Merely because final report under Section 173(8) Cr. PC has been filed but the Magistrate competent has not taken a decision either to accept or reject it, the impugned order dated 24.5.2000 of the Addl. Sessions Judge (who has been trying other accused against whom report under Section 173(2) Cr. PC was filed after having kept investigation pending against Bane Singh against whom final report under Section 173(8) Cr. PC has been filed on 4.5.2000) cannot be held bad in law for invoking powers of this Court under Section 482 Cr. PC because under the impugned order the learned Addl. Sessions Judge was deferred consideration of invoking Section 319 Cr. PC till the closure of prosecution evidence during inquiry or trial.

6. Be that as it may, final report under Section 173(8) Cr. PC submitted by the police (certified copy whereof has been annexed to this misc. petition) makes it clear that it favours with accused Bane Singh. But the complainant petitioner has not arrayed Bane Sing has party respondent to this misc. petition. Hence without expressing any opinion on merits as to the complicity of Bene Singh in the impugned incident, and leaving the matter open for consideration of final report dated 4.5.2000 by the competent Magistrate under Section 173 Cr. PC or the

Sessions Court under Section 319 Cr. PC for proceeding further in accordance with law on the basis of material on record independently and without being influenced by this order, in my considered view, this Criminal Misc. Petition is not at all maintainable, inasmuch as at the stage of consideration under Section 173 Cr. PC the Court should not enter upon a process of evaluating the evidence by deciding its worth or credibility because the exercise during the stage is to find out whether materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further. At the stage when an investigation culminates in a final report under Section 173 Cr. PC. competent court should scrupulously scrutinise report under Section 173 Cr. PC and accompaniments by applying its judicial mind and take a decision either to accept or reject it. I lent support from the dictum of law in Sampat v. State : (1993)1SCC561 .

7. Resultantly, this Criminal Misc. Petition being not maintainable and devoid of any merit is dismissed. A copy of this order be sent to the concerned Magistrate and the Addl. Sessions Judge Hindaun City in Sess. Case No. 28/1997 arising out of FIR No. 14/1997 PS Surot (Karauli).

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