

Kulwant Singh Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Apr-01-2011

Judge : Shri Narayan Shukla, J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 319, sub-section (4)(b);

Appeal No. : Criminal Misc.Case No.1003 of 2011

Appellant : Kulwant Singh

Respondent : State of U.P. and Another

Judgement :

1. Heard Dr.Salil Kumar Srivastava, learned counsel for the petitioner, Mr.R.K.Singh, learned counsel for opposite party No.2 and Mr.Rajendra Kumar Dwivedi, learned Additional Government Advocate for the State.

2. The petitioner has challenged the order dated 11 th of February, 2011, passed by the learned Additional Sessions Judge, Lakhimpur Kheri in Sessions Trial No.297 of 2008, on the application moved under Section 319 of the Code of Criminal Procedure. By means of order impugned, on the basis of statement of P.W.1 Harjinder Singh (complainant) and P.W.2 Jeet Singh (injured witness), the petitioner, in exercise of power provided under Section 319 of the Code of Criminal Procedure, has been summoned for trial and the case of trial has been separated from other co-accused.

3. The petitioner has challenged the order mainly on the ground that the learned Trial court has not recorded any finding to the effect that on the basis of evidence on record there is possibility of conviction of petitioner. It is stated that in absence of any such finding, the order passed by the learned Trial Court is unsustainable in the eye of law. In support of his submission he cited the following cases decided by this court as well as by the Hon'ble Supreme court:-

4. Rajol and others versus State of U.P. And another, passed in Crl.Misc. Case No.2532 of 2010 (U/s 482).

5. In the said case this court after considering the several decisions on the point held that the court considering the evidence for the purpose of Section 319 Cr.P.C. is not legally required to evaluate the evidence as it is ordinarily done while rendering the final judgment, but the court has to see whether or not, the evidence on record appeals to the reason for the purposes of Section 319 Cr.P.C. and the story narrated by the witness, against the person sought to be summoned, is not improbable and absurd and a conviction is possible on such statement, if uncontroverted. In the case of Hardeep Singh versus State of Punjab, reported in (2009) 16 SCC 785, the Division Bench of two Hon'ble Judges of the Supreme Court has referred two questions for consideration of a Bench of three Hon'ble Judges. The second question is relevant in the present case, which is reproduced hereunder:-

(ii) What is the test and what are the guidelines of exercising power under Section 319(1) Cr.P.C.? Whether such power can be exercised only if the court is satisfied that the accused summoned in all likelihood would be convicted?

6. The aforesaid referred question has been noticed by the 3 Hon'ble Supreme Court in the case of Harbhajan Singh and another versus State of Punjab and another, reported in (2009) 13 SCC 608, but it has been observed that if a judicious discretion exercised by the Court had led it to pass an order under Section 319 of the Code, the High Court exercising a revisional jurisdiction would interfere therewith, inter alia, in a case where legal principles laid down by this court had not been satisfied.

7. In the case of Sarabjit Singh and another versus State of Punjab and another, reported in (2009) 16 SCC 46, the Division Bench of two Hon'ble Judges of the Supreme court has also taken note of the aforesaid reference and observed as under:-

21. An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction. For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

8. The Supreme Court further held that the higher standard be set up for the purpose of invoking the jurisdiction under section 319 of the Code.

9. In the case of Y. Saraba Reddy versus Puthur Rami Reddy and another, reported in (2007) 4 SCC 773, the Division Bench of three Judges of the Hon'ble Supreme Court considered the scope of Section 319 of the code of Criminal Procedure and took note of earlier decisions i.e. Joginder Singh versus State of Punjab, reported in (1979) 1 SCC 345 as well as the Municipal Corporation of Delhi versus Ram Kishan Rohtagi, reported in (1983) 1 SCC 1. The relevant paragraph 10 and 11 of the case of Municipal Corporation of Delhi (Supra) are reproduced hereunder:-

10. On a careful reading of Section 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with the other accused persons, if the court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person, even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused

only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence. Of course, as evident from the decision in *Sohan Lal v. State of Rajasthan*, reported in (1990) 4 SCC 580 the position of an accused who has been discharged stands on a different footing.

11. Power under Section 319 of the Code can be exercised by the court suo motu or on an application by someone including the accused already before it. If it is satisfied that any person other than the accused has committed an offence he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word 'evidence' in Section 319 contemplates the evidence of witnesses given in court. Under sub-section (4)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of subsection (4)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned.

10. After considering the aforesaid observations the Hon'ble Supreme Court held that the trial court shall take steps for proceeding against the respondents in terms of Section 319 of the Code of Criminal Procedure.

11. In the case of *Suman versus State of Rajasthan and 6 another*, reported in (2010) 1 SCC 250, the Hon'ble Supreme Court held as under:-

27. In view of the settled legal position as above, we hold that a person who is named in the first information report or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 Cr PC if from the evidence collected/produced in the

course of any inquiry into or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. As a corollary, we hold that the process issued against the appellant under Section 319 Cr PC cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her.

12. In view of the settled view of the Hon'ble Supreme court as has been discussed, here-in-above, it is not in dispute that in dealing with the case under Section 319 of the Code, the trial court has been permitted to proceed in terms of Section 319 of the Code. Section 319 of the Code is extracted below:-

319. Power to proceed against other persons appearing to be guilty of offence.-(1) Whether, 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 the⁷ 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. (3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) 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 witnesses re-heard; (b) subject to the provisions of clause (a), the case may proceed as if such persons had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced:

13. As is evident from the aforesaid provisions, it does not require anywhere for the court to record any such finding as against the person who has been summoned, the evidence is such as to lead his conviction unless it is rebutted, therefore, keeping in view the extra ordinary power provided under this Section, it can be said that the learned Magistrate in exercising the power provided under this very Section has to take extra ordinary care, for which he can adopt some higher

standard to arrive at satisfaction for calling upon the witness under Section 319.8

14. This court has already examined the same question in the Criminal Misc. Case No.3907 of 2008:Shankar and another versus State of U.P. And another and in Criminal Misc. Case No.654 of 2011 (U/s.482 Cr.P.C.):Mohd.Arif and another versus State of U.P.and another and has observed that there is no restriction on the learned Magistrate to summon any person for trial, if at any stage of proceeding the trial court is satisfied that on the basis of evidence collected/produced in the course of inquiry into or trial of the offence, that such person has committed any offence, for which he can be tried with other accused.

15. In the present case the learned Magistrate has shown his satisfaction to summon the petitioner for trial on the basis of the statement of witnesses, being satisfied that the petitioner is liable to be tried. Though the learned Magistrate had to record his satisfaction in specific words as to what higher standard he has adopted to satisfy himself for summoning the petitioner, but he has failed to do so, however, keeping in view the statement of witnesses, I am of the view that the petitioner has rightly been summoned for trial, therefore, I do not feel it appropriate to interfere in the order impugned only on the ground that the learned Magistrate has failed to disclose the material of his satisfaction for consideration of the application and for summoning the petitioner for trial.

16. So far as the separation of trial is concerned, the learned counsel for the respondent No.2 Mr.R.K.Singh, informs that till9 date the petitioner has not surrendered before the court below, whereas the case of the other accused is at the stage of prosecution evidence, therefore, the petitioner's trial has rightly been separated from the other co-accused.

17. However, in light of the aforesaid facts, I am of the view that the case is not such a stage as it permits the separation of petitioner's trial from other co-accused, therefore, the direction of the learned Magistrate for separation of petitioner's trial from other accused being not supported with any reasonable ground, is hereby quashed and it is observed that the petitioner shall be tried together with the co-accused. To this extent the petition is allowed and for other reliefs the petition is dismissed.

