

Km. Pushpa Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Nov-12-2010

Judge : Ashok Srivastava, J.

Appeal No. : CRIMINAL REVISION No. - 1790 of 2002

Appellant : Km. Pushpa

Respondent : State of U.P. and Others

Advocate for Def. : Govt. Advocate; S P Sharma, Advs

Advocate for Pet/Ap. : Sudhir Shandilya; Vivek Shandilya, Advs

Judgement :

1. S.T. No. 3 of 2002 (old S.T. No. 55 of 2000) (State v. Manoj @ Chini) under section 363, 366 and 376 I.P.C., Case Crime No. 297 of 2000, Police Station Sipari Bazar, Jhansi was pending before the learned Additional Sessions Judge, Court No. 4, Jhansi. An application under Section 319 Cr.P.C. was moved before that court by the revisionist. The said application was heard by the learned Judge and he disposed it of on 3.10.2002 and rejected the same. Hence the revision.

2. The brief facts of the case are that an F.I.R. was lodged with the police against one Manoj @ Chini which was registered at the police station at Case No. 297 of 2000 under Section 363 and 366 I.P.C. In the F.I.R. the complainant Smt. Ram Pyari had alleged that the accused Manoj @ Chini had enticed away her minor

daughter Km. Pushpa. The age of Pushpa has been disclosed in the F.I.R. as 14 years. The matter was investigated. During the course of investigation the girl was recovered. She was medically examined and her age was found to be 18 19 years. She was produced before the Magistrate on 2.6.2000 and on the same day she was examined under Section 164 Cr.P.C. In her statement under Section 164 Cr.P.C. the prosecutrix has said that on the relevant date she had met Manoj @ Chini and requested him that he should take her away with him from her home. Thereupon Manoj took her to Kanpur where they stayed in a hotel. She has further stated that she had sexual intercourse with Manoj of her sweet will. She also stated before the learned Magistrate that she had gone alongwith Manoj of her free will and that she wanted to marry him. She has further said that her parents and parents of Manoj were ready to get them married. On the next date i.e. on 3.6.2000 the prosecutrix, who is the revisionist herein, moved an application before the learned Magistrate who had examined her under Section 164 Cr.P.C. with the prayer that she should be further examined by him under Section 164 Cr.P.C. because on the previous date she did not disclose the entire story to the Magistrate. After hearing the revisionist the learned Magistrate rejected her application. Feeling aggrieved by the said rejection, Criminal Revision No. 1006 of 2000 was filed before this Court. After hearing both the parties this Court vide its order dated 10.7.2000 dismissed the revision holding that there was no question of recording a second statement under Section 164 Cr.P.C. After investigation of the case the matter culminated into a chargesheet against Manoj @ Chini. Charges were framed against the accused. The revisionist was examined by the learned trial court under Section 231 Cr.P.C. in which she has added the names of all the private opposite parties alleging that they were involved in the alleged offence. Her examination-in-chief was completed and thereafter she was partly cross examined from the side of the sole accused i.e. Manoj @ Chini. Thereafter an application 13-B was moved before the learned lower court under Section 319 Cr.P.C. in which she has prayed that all the private opposite parties should be summoned to stand trial alongwith the chargesheeted accused Manoj. As mentioned above after hearing the revisionist, the learned Additional Sessions Judge rejected the application.

3. This case was listed for hearing on 27.5.2010. On that date learned counsel for the revisionist and learned A.G.A. were present but no one was present from the side of opposite party nos. 2 to 9. Arguments were heard in detail which were advanced by learned counsel for the revisionist and the learned A.G.A.

4. From the perusal of the records it is evident that none of the private opposite parties have been named in the F.I.R. No allegation is there against them either in the F.I.R. or in the statement of the revisionist recorded by the Magistrate under Section 164 Cr.P.C. on 2.6.2000. In her statement under Section 164 Cr.P.C. the prosecutrix had supported the accused Manoj. From the perusal of the order passed by the learned lower court it is evident that she was examined by the I.O. on 31.5.2002 under Section 161 Cr.P.C. but she had not named any of the private opposite parties in her statement. The revisionist was further examined by the I.O. on 2.7.2002. Even in this statement she did not mention name of any of the private opposite parties. It is also worth mentioning here that the application moved by the revisionist before the learned Magistrate with the prayer that she should be further examined under Section 164 Cr.P.C. was rejected and the same order was confirmed by this Court in revision.

5. It is submitted from the side of the revisionist that the trial court did not consider the application dated 9.8.2002 and the statement of P.W. 1 under Section 231 Cr.P.C., that the view taken by the learned lower court is erroneous and it has committed an illegality in placing its reliance only on the statements of the revisionist under Sections 161 and 164 Cr.P.C. It has further been submitted that the learned trial court has not evaluated the statement of the revisionist recorded as P.W. 1 before him and instead placed reliance on the statements recorded during the course of investigation.

6. Learned A.G.A. has opposed this revision. He has contended that the order passed by the learned lower court is legal and no interference of this Court is warranted in the order impugned.

7. The records show that at any point of time before her statement under Section 231 Cr.P.C. the revisionist or the complainant of the case has not mentioned even the names of any of the private opposite parties what to talk of their roles in the

entire episode. The statement of the revisionist recorded under Section 231 Cr.P.C. is totally against her statement recorded on oath before the learned Magistrate under Section 164 Cr.P.C. and her statement recorded by the I.O. under Section 161 Cr.P.C.

8. In (1998) 7 Supreme Court Cases 149 (Ranjit Singh v. State of Punjab) the Apex Court has said that the Sessions Judge gets unfettered jurisdiction to take cognizance of the offences involved in the case. The crucial question before the Apex court in this case was that whether such jurisdiction would envelop powers to summon any person as an accused other than those covered by the committal order. The Apex Court was of the opinion that from the stage of committal till the Sessions court reaches the stage of evidence collection indicated in Section 230 of the Code, it can deal with only the accused referred to in Section 209 of the Code. There is no intermediary stage till then for the Sessions Court to add any other person to the array of accused. In these circumstances, it was held that the evidence envisaged in Section 319 of the Code is the evidence tendered during the trial of the case, if the offence is triable by the court of Session. The material placed before the committal court cannot be treated as evidence collected during enquiry or trial.

9. In (2008) 3 SCC (CrI.) 710 (Bholu Ram v. State of Punjab and another) the Apex Court has said that "Section 319 Cr.P.C. empowers a court to proceed against any person not shown to be an accused if it appears from the evidence that such person has also committed an offence for which he can be tried together with the accused. Sometimes a Magistrate while hearing a case against one or more accused finds from the evidence that some person other than the accused before him is also involved in that very offence. It is only proper that a Magistrate should have power to summon by joining such person as an accused in the case". It has further been held by the Supreme Court in this case that "the primary object underlying Section 319 is that the whole case against all the accused should be tried and disposed of not only

expeditiously but also simultaneously. Justice and convenience both require that cognizance against the newly added accused should be taken in the same case and in the same manner as against the original accused. The power must be regarded and conceded as incidental and ancillary to the main power to take cognizance as part of normal process in the administration of criminal justice". It should be mentioned here that the evidence referred to above means the evidence recorded by the court of the witnesses as has been observed by the Apex Court in Ranjit Singh's case (supra). In Bholu Ram's case (supra) the Apex Court has further said that "it is settled law that power under Section 319 Cr.P.C. can be exercised either on an application made to the court or by the court suo motu. It is in the discretion of the court to take an action under the said section and the court is expected to exercise the discretion judicially and judiciously having regard to the facts and circumstances of each case."

10. In 2001 (43) ACC 635 (Jagdish and others v. State of U.P. and another) this Court has said that "the court can take action even on the statement made in examination-in-chief of one or more witnesses.

11. In all the three above mentioned cases it has not been discussed whether the court should assess or not the quality of the statements of the witnesses on the basis of which a person can be summoned as a accused in a case under Section 319 Cr.P.C. This aspect has been discussed by the Apex Court in 2009 (66) ACC 32 (Sarabjit Singh and another v. State of Punjab and another). In this case the Apex Court has said that before exercising its jurisdiction under Section 319 Cr.P.C. the court must be satisfied that there was strong suspicion and an extraordinary case has been made out as against the person who has been sought to be implicated in the case as an accused. Such power should be exercised only on the basis of sufficient and cogent reasons and the court is required to assign the reason so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. A higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down. In this connection

paragraphs 17 and 18 of Sarabjit Singh's case (supra) is reproduced hereinbelow :

"17. The provision of section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the Court. Has the criterion laid down by this Court in Municipal Corporation of Delhi (supra) has been satisfied is the question Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the Court must also be such which would satisfy the Court that it is one of those cases where its jurisdiction should be exercised sparingly.

12. We may notice that in Y. Saraba Reddy v. Puthur Rami Reddy and another), this Court opined :

"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 that evidence of witnesses given in Court"

13. 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.

14. 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.

18. The observation of this Court in Municipal Corporation of Delhi (supra) and other decisions following the same is that mere existence of a prima facie case may not serve the purpose. Different standards are required to be applied at different stages. Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the Court must be satisfied that there exists a strong suspicion. While framing charge in terms of section 227 of the Code, the Court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. Whether a higher standard be set up for the purpose of invoking the jurisdiction under section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof, viz., (i) an extraordinary case and (ii) a case for sparingly exercise of jurisdiction, would not be satisfied."

15. The Apex Court in Sarabjit Singh's case (supra) had discussed and dealt with the standard and quality of the statements and evidence which should be there before the trial court when a witness or witnesses are examined before it. It is clear that if, prima facie, the statement of a witness at the trial stage is apparently frivolous and unbelievable the court should not exercise its extraordinary power under Section 319 Cr.P.C.

16. In the instant case it is evident that for the first time in her statement under Section 231 Cr.P.C. the revisionist has stated before the court that the private opposite parties had participated in commission of the alleged crime. A number of contradictions are there in the statements of the revision under Sections 161, 164 and 231 Cr.P.C. In these circumstances, if the trial court had rejected her application under Section 319 Cr.P.C., in my considered opinion, no illegality has been committed.

17. On the basis of the above discussion, I am of the view that this revision is totally devoid of merit and it is dismissed. The stay order, if any, stands vacated.

18. Let the trial court be informed accordingly who shall proceed in accordance with law.

