RAM PAL SINGH & ORS. A

v.

STATE OF U.P. & ANR.

CIVIL APPEAL NO. 297 OF 2009

FEBRUARY 13, 2009

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[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Code of Criminal Procedure, 1973 – s 319 – Power to proceed against other persons appearing to be guilty of offence – Appellant named in FIR but not as accused in charge-sheet during trial – Eye-witness to the incident named appellants as persons involved in incident causing death of deceased – Application to summon appellants – Rejected by trial court – However, allowed by High Court directing summoning of appellants for trial along with co-accused in view of evidence of prosecution witness during trial itself – Justification of – Held: Justified. C D

The question which arose for consideration in this appeal was whether High Court was justified in directing the appellant to be summoned for trial along with the co-accused in view of the evidence of the prosecution witness during the trial itself. E

Dismissing the appeal, the Court

HELD: 1 The ingredients of s. 319 of the Code of Criminal Procedure, 1973 are unambiguous and indicate that where in the course of 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 the accused, the Court may proceed against such person for the offence he has committed. All that is required by the Court for invoking its powers under s 319 Cr.P.C. is to be satisfied that from the evidence adduced before it, a person F G

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A against whom no charge had been framed, but whose complicity appears to be clear, should be tried together with the accused. It is also clear that the discretion is left to the Court to take a decision on the matter. [Paras 15 and 16] [297-E, F, G]

B 2. In the instant case, although, the appellants were named in the F.I.R., they were not named as accused in the charge-sheet during the trial. However, P.W.1 in his evidence named the appellants as persons who were involved in the incident causing the death of deceased and C injuries to MS. Despite that the trial court, on two separate occasions, rejected the prayer made by the respondent No.2 for summoning the appellants under section 319 Cr.P.C. High Court after considering the evidence of P.W.1, thought it necessary for the appellants to be summoned. Although, certain other observations made by the High Court regarding the orders passed by the trial court could and should have been avoided, the High Court did not commit any error in directing that the appellants be summoned to stand trial along with the co-accused, in view of the evidence of P.W.1 during the trial itself. The direction given by the High Court for summoning the appellants under Section 319 Cr.P.C are upheld and order of High Court does not call for interference. [Paras 15, 17, 18 and 19] [297-E, F, G; 298-A, B, C, D]

Mohd. Shafi v. Mohd. Rafiq (2007) 5 SCALE 611 – referred to.

Case Law Reference

(2007) 5 SCALE 611 Referred to. Para 8

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 297 of 2009

From the final Judgement and Order dated 5.10.2007 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Criminal Revision No. 549 of 2007

V.J. Francis, Arun K. Singh, Anupam Mishra and Sushil Balwada, for the Appellant. A

Pramod Swarup, S.A.A. Abadi, Vandana Mishra, G. Venkateswara and Satpal Singh, for the Respondent.

The Judgement of the Court was delivered by B

ALTAMAS KABIR, J.

1. Leave granted.

2. In respect of an incident which took place on 1st October, 2006, in the day time at about 1.00 p.m., Kamlesh Singh C (PW.1) lodged a complaint before the Station House Officer, Police Station Sitapur, U.P., alleging that while his younger brother, Brijesh Kumar Singh alias Bablu Singh along with his brother-in-law Manvender Singh, was going on foot towards Mani Chauraha through Gupta Colony at Sitapur, U.P., the ac- D cused persons, in a planned manner with common intention, attacked the deceased and Manvender Singh. On account of such assault, Brijesh Kumar Singh died on the spot and Manvender Singh also sustained injuries. On completion of investigation, the Investigating Officer filed a challan against the E accused persons on 22nd October, 2006, under Section 307, 302 read with Section 120-B IPC and the matter was, thereafter, committed to the Sessions Court for trial.

3. On 19th June, 2007, the deposition of Kamlesh Singh (PW.1) was recorded by the learned Sessions Judge, Sitapur. F The said witness reiterated the statements which had been made by him in the First Information Report. It also appears that on the same day, Kamlesh Singh filed an application under Section 319 Cr.P.C. before the learned Sessions Judge, Sitapur, for summoning the appellants herein to face trial in respect of G the said incident. The said application was dismissed by the learned Additional Sessions Judge on 5th July, 2007, and against such order of dismissal, Kamlesh Singh filed Criminal Revision No.413 of 2007, which was disposed of by the High Court on 29th August, 2007, by setting aside the impugned order and H

A directing the trial Court to pass a fresh order in the light of the observations made in the order of the High Court.

4. In compliance with the said order, the learned Additional Sessions Judge re-heard the application filed under Section 319 Cr.P.C. and by his order dated 15th September, 2007, the B learned Additional Sessions Judge, once again, dismissed the application filed by the respondent No.2 for summoning the appellants herein under Section 319 Cr.P.C.

5. The dismissal of the application was followed by a second criminal revision petition filed by the respondent No.2 on C 5th October, 2007, being No.549 of 2007 and after hearing the parties, the High Court came to the conclusion that the fresh order passed by the learned Additional Sessions Judge on 15th September, 2007, was in direct defiance of the order passed by the High Court earlier on 29th August, 2007. In that view of D the matter, the High Court not only sought for an explanation from the learned trial Judge for not complying with the aforesaid order of the High Court, but after quashing the impugned order dated 15th September, 2007, directed the trial Court to issue summons against Ram Pal Singh, Deepak Singh, Ajai E Kumar Singh and Anil Kumar Singh for their appearance as accused in Sessions Trial No.1163 of 2006 under Section 302, 307 and 120-B IPC.

6. It is the said order of the High Court which has been F impugned in the instant appeal by the persons summoned under Section 319 Cr.P.C.

7. Mr. V.J. Francis, learned advocate, appearing for the appellants, submitted that although the appellants had not been named by any of the other witnesses, only on the statement of G Kamlesh Singh (PW.1), they had been summoned under Section 319 Cr.P.C. as accused in the sessions trial. Mr. Francis also submitted that the very presence of Kamlesh Singh (PW.1) at the time of the incident was highly doubtful as he had not named some of the other persons named by other eye-wit- H nesses who were said to have been present at the time of the

incident. He also urged that none of the eye-witnesses to the incident had named the appellants in their statements made under Section 161 Cr.P.C. Mr. Francis submitted that the High Court did not also consider the fact that Manvender Singh, who had been accompanying the deceased at the time of the incident and had also sustained injury in the alleged assault, did not name any of the appellants as having participated in the incident. Mr. Francis submitted that the order of the High Court summoning the appellants under Section 319 Cr.P.C. on the sole evidence of PW.1 whose presence at the time of incident was highly doubtful, was erroneous and was liable to be set aside.

8. In support of his submissions, Mr. Francis referred to and relied on a recent decision of this Court in the case of Mohd. Shafi vs. Mohd. Rafiq (2007 (5) SCALE 611), wherein in a similar situation, the order of the High Court directing issuance of summons was set aside on the ground that before the trial Court decided to take recourse to the provisions of Section 319 Cr.P.C., it would have to be satisfied that the requisite conditions for taking such action actually existed. Commission of an offence by a person not facing trial must, therefore, appear to the Court concerned to be a certainty. It cannot be based on an *ipse dixit* on the part of the Court and the discretion in this regard had to be judicially exercised. This Court, while setting aside the order of the High Court, inter alia, observed that before the Court exercises its discretionary jurisdiction in terms of Section 319 Cr.P.C., it must arrive at a satisfaction that there exists a possibility that the accused, so summoned, is in all likelihood liable to be convicted.

9. Mr. Francis submitted that while passing the impugned order, the High Court did not consider the fact that the application made under Section 319 Cr.P.C. filed for summoning the appellants had been rejected on the ground that the injured witness Manvendra Singh had not indicated their complicity with the incident in his statement under Section 161 Cr.P.C. On the other hand, the High Court came to the conclusion that it was

A obligatory on the part of the learned Trial Judge to have summoned the appellants to face trial and has failed to do so against the existing canons of law. Mr. Francis submitted that although the High Court had intended the Trial Court to pass a fresh order along the lines suggested by it in its order dated 29th August, 2007, the Trial Court had in defiance of the said order, recklessly passed the order dated 15th September, 2007, which was no different from its earlier order refusing to summon the appellants under Section 319 Cr.P.C.

10. Mr. Francis submitted that the hard stand taken by the C High Court would be evident from its order seeking an explanation from the Trial Judge for not complying with the intent of the Court, as clearly indicated in the order of 29th August, 2007. Apart from quashing the second order passed by the Trial Judge on 15th September, 2007, the High Court directed the Trial Court D to issue summons against the appellants herein for their appearance as accused in ST No.1163/2006 under Sections 302, 307 and 120-B I.P.C.

11. Mr. Francis submitted that while interpreting its own order, the High Court made it clear that while passing a fresh E order, the same was to be in line with the observations made by the High Court. Mr. Francis submitted that this approach of the High Court was completely erroneous since the discretion to decide afresh had to be left to the trial Court.

F 12. Opposing Mr. Francis's submissions, Mr. Pramod Swarup, learned Counsel appearing on behalf of the respondents, urged that in order to invoke the provisions of Section 319 Cr.P.C., all that was required to be seen was whether the persons to be summoned were in some way implicated in the G incident for which the trial was being conducted, and, if so, whether such accused had been named by any of the witnesses for the prosecution. It is also required to be seen that the evidence was of such nature that by relying upon the same, there was a strong possibility of the persons being added as accused of being ultimately convicted.

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13. Mr. Swarup contended that in this case the appellants had been directly named not only in the F.I.R. but also by the complainant, Kamlesh Singh, who claimed to be an eye-witness of the murder of his brother committed in broad day-light. Mr. Swarup submitted that nothing further was required to be done to satisfy the Court for issuing summons to the named persons under Section 319 Cr.P.C., whose complicity had been shown from the evidence adduced during the trial. He submitted that only after being satisfied that the appellants had a positive role to play in the incident, summons under Section 319 Cr.P.C. were issued to the appellants. He urged that the order of the High Court did not warrant any interference and the appeal was liable to be dismissed.

14. We have carefully considered the submissions made on behalf of the respective parties and the provisions of Section 319 Cr.P.C. and have arrived at the conclusion that no interference is called for with the order passed by the High Court.

15. The ingredients of Section 319 are unambiguous and indicate that where in the course of 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 the accused, the Court may proceed against such person for the offence he has committed.

16. All that is required by the Court for invoking its powers under Section 319 Cr.P.C.is to be satisfied that from the evidence adduced before it, a person against whom no charge had been framed, but whose complicity appears to be clear, should be tried together with the accused. It is also clear that the discretion is left to the Court to take a decision on the matter.

17. In the instant case, although, the appellants were named in the F.I.R., they were not named as accused in the charge-sheet during the trial. However, P.W.1 in his evidence, has named the appellants as persons who were involved in the incident causing the death of Brijesh Kumar Singh and injuries to

A Manvender Singh. Despite the above, the trial Court, on two separate occasions, rejected the prayer made by the Respondent No.2 for summoning the appellants herein under Section 319 Cr.P.C. The High Court, after considering the evidence of P.W.1, Kamlesh Singh, thought it necessary for the appellants B to be summoned.

18. Although, certain other observations made by the High Court regarding the orders passed by the Trial Court could and should have been avoided, we are also of the view that the High Court had not committed any error in directing that the appel- C lants be summoned to stand trial along with the co-accused, in view of the evidence of P.W.1 during the trial itself.

19. We, therefore, dismiss the appeal and uphold the direction given by the High Court for summoning the appellants under Section 319 Cr.P.C.

N.J. Appeal dismissed.