Joginder Singh and Another

Vs

State of Punjab and Another

Criminal Appeal No. 501 of 1977

(V. R. Krishna Iyer, V. D. Tulzapurkar, R. S. Pathak

JJ)

16.11.1978

JUDGMENT

TULZAPURKAR, J. –

1. This appeal by special leave is directed against the order of the Punjab and Haryana High Court in Criminal Revision No. 909 of 1977, whereby the High Court confirmed the order passed by the Additional Sessions Judge, Ludhiana on October 19, 1977 directing that the attendance of the two appellants (Joginder Singh and Ram Singh) be procured and they be ordered to stand trial together with three accused who had been committed to his Court to stand their trial for offences under Sections 452, 308 and 323 each read with 34, I.P.C.

2. The facts giving rise to the appeal may be stated thus : At the instance of one Mohinder Singh a criminal case was registered at Police Station Dakha against Joginder Singh, Ram Singh (the two appellants), Bhan Singh, Darshan Singh and Ranjit Singh on the allegation that each one armed with a "Toki" had entered his house on April 30, 1977 at 10.00 a.m. and had caused a number of injuries to Ajaib Singh and Bir Singh who were present in the house, with the respective weapons. It was further alleged by Mohinder Singh that Darshan Singh opened the attack with "Toki" blow from reverse side on Ajaib Singh's head whereas Ram Singh had dealt him blows with the butt of his gun and when Bir Singh tried to rescue Ajaib Singh, Joginder Singh and Ranjit Singh gave blows on his head and that on medical examination Ajaib Singh was found to have four injuries by blunt weapons and Bir Singh was found to have suffered one injury with a blunt weapon. During the investigation the police found Joginder Singh and Ram Singh (the appellants) to be innocent and, therefore a charge-sheet was submitted by the police only against the remaining three accused Bhan Singh, Darshan Singh and Ranjit Singh. The learned Magistrate who held a preliminary inquiry committed the three accused Bhan Singh, Darshan Singh and Ranjit Singh to the Sessions Court and the learned Additional Sessions Judge, Ludhiana, framed charges against the three accused for offences under Sections 452/308/323 read with Section 34, IPC but at the trial evidence of Mohinder Singh and Ajaib Singh was recorded during the course of which both of them implicated Joginder Singh and Ram Singh in the incident. Thereupon at the instance of Mohinder Singh, the Public Prosecutor moved an application before the learned Additional Sessions Judge for summoning and trying Joginder Singh and Ram Singh along the three accused, who were already facing their trial. The application was opposed by the Counsel for the accused principally on the ground that the Sessions Judge had no jurisdiction or power to summon the two appellants and direct them to be made accused to stand their trial along with the three accused because they had neither been charge-sheeted nor committed and the Sessions Court had no jurisdiction or power directly to take

cognizance against them in respect of any offences said to have been committed by them. The learned Additional Sessions Judge negatived the said contention and presumably exercising his powers under Section 319 of the Code of Criminal Procedure, 1973 passed an order on October 19, 1977 directing that the attendance of the two appellants be procured and further directing that they should stand their trial together with the three accused. Feeling aggrieved by this order the appellants filed a Criminal Revision Application 909/1977 to the High Court but the High Court dismissed the Revisional Application on November 24, 1977. The appellants have come up in appeal to this Court by special leave.

3. Counsel for the appellants raised two contentions in support of the appeal. In the first place relying upon Sections 193 and 209 of the Code of Criminal Procedure counsel contended that there was a bar to the Court of Sessions taking cognizance of any offence as a court of original jurisdiction unless the appellants were committed to it by a Magistrate under the Code and it was pointed out that admittedly in the instant case though the FIR had involved the two appellants in the alleged incident, on investigation the police had found no material against them with the result the police had submitted a charge-sheet only against the three accused and not the appellants and even the committal order passed by the Magistrate was only in respect of the three accused and, therefore, it was not open to the learned Additional Sessions Judge, Ludhiana, to take the impugned action against the appellants. Secondly, counsel contended that the only provision in the Criminal Procedure Code which empowered the Court to try anybody not prosecuted by the police, was to be found in Section 319 but that provision was inapplicable to the facts of the present case for two reasons, first, that section 319 in so far as it is applicable to Sessions Court would be subject to or subordinate to Section 193 and second, the phrase "any person not being the accused" occurring in the section exclude from its operation an accused who had been released by the police under Section 169 of the Code, and had been shown in column 2 of the charge-sheet. Reliance was placed by the counsel upon a decision of the Andhra Pradesh High Court in Patananchala China Lingaiah v. The State (1977 Cri LJ 415 : (1977) 2 AP LJ (HC) 39). On the other hand, counsel for the respondents contended that there has been a change in the phraseology in Sections 193 and 209 of the Code of Criminal Procedure, 1973 as compared to the equivalent provisions contained in the old Code with the result it was not the accused but the case which got committed to the Court of Sessions and once the Court of Sessions had upon such commitment seisin of the case it was open to it to exercise the power under Section 319. It was further urged that there was no warrant to read Section 319 subject or subordinate to Section 193 and that it covered cases of suspects like the two appellants and, therefore, the High Court was right in upholding the order of the learned Additional Sessions Judge, Ludhiana.

4. The real question centres around the scope and ambit of Section 319 of the Code of Criminal Procedure, 1973, under which a power has been conferred upon a criminal Court to add a person, not being the accused before it and against whom during the trial evidence comes forth showing his involvement in the offence, as an accused and try him along with those that are being tried and the question is whether a Sessions Court can add such a person as an accused in the absence of any committal order having been passed against him ? Sub-sections (1) and (4) of Section 319 are material in this behalf and the said provisions run thus :

> 319. Power to proceed against other persons appearing to be guilty of offence. (1) 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 for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

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(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 it such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

5. Under the 1898 Code the equivalent provision was to be found in Section 351(1) under which it was provided that any person attending a criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned; sub-section (2) provided that in such a situation the evidence shall be re-heard in the presence of the newly added accused. With regard to this old provision, the Law Commission in its 41st Report (vid para 24.80) observed that the power conferred upon a criminal Court thereunder could be exercised only if such person happened to be attending the Court and he could then be detained and proceeded against, but there was no express provision in Section 351 for summoning such a person if he was not present in court, and, therefore, a fairly comprehensive provision was recommended which now forms the subject-matter of the present Section 319(1). The Law Commission further observed in its said Report (vide para 24.81) that the old Section 351 assumed that the Magistrate proceeding under it had the power of taking cognizance of the new case but did not say in what manner cognizance was taken by the Magistrate and the question was whether against the newly added accused, cognizance will be supposed to have been taken on the Magistrate's own information under Section 190(1)(c) or only in the manner in which cognizance was first taken of the offence against the other accused and the question was important because the methods of inquiry and trial in the two cases differed; the Law Commission felt that the main purpose of this particular provision was that the whole case against all known suspects should be proceeded with expeditiously and convenience required that cognizance against the newly added accused should be taken in the same manner as against the other accused and the Law Commission, therefore, proposed that a new provision should be incorporated providing that there will be no difference in the mode of taking cognizance if a new person was added as an accused during the proceedings and that is how clause (b) of sub-section (4) of Section 319 came to be enacted as set out above which incorporates a deeming provision. The above recommendation of the Law Commission in its 41st Report clearly brings out the true scope and ambit of the power that was intended to be conferred upon a criminal Court under the present Section 319(1).

6. A plain reading of Section 319(1), which occurs in Chapter XXIV dealing with general provisions as to inquiries and trials, clearly shows that it applies to all the Courts including a Sessions Court and as such a Sessions Court will have the power to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused, but the question is whether it has power to do so without there being a committal order against such person ? In this context the provisions of Sections 193 and 209 of the present Code vis-a-vis the equivalent provisions under the old Code will have to be considered. Section 193 and Section 209 of the present Code run as follows :

> 193. Cognizance of offences by Courts of Session - Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

209. Commitment of case to Court of Session when offence is triable exclusively by it. - When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall -

> (a) commit the case to the Court of Session;
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> (b) subject to the provisions of this Code relating to bail, remand the accused to custody during and until the conclusion of, the trial;
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> (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence :
>
> (d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

It will be noticed that both under Section 193 and Section 209 the commitment is of 'the case' and not of 'the accused' whereas under the equivalent provision of the old Code viz. Section 193(1) and Section 207-A it was 'the accused' who was committed and not 'the case'. It is true that there cannot be a committal of the case without there being an accused person before the Court, but this only means that before a case in respect of an offence is committed there must be some accused suspected to be involved in the crime before the Court but once the case in respect of the offence qua those accused who are before the Court is committed then the cognizance of the offence can be said to have been taken properly by the Sessions Court and the bar of Section 193 would be out of the way and summoning of additional persons who appears to be involved in the crime from the evidence led during the trial and directing them to stand their trial along with those who had already been committed must be regarded as incidental to such cognizance and a part of the normal process that follows it; otherwise the conferral of the power under Section 319(1) upon the Sessions Court would be rendered nugatory. Further Section 319(4)(b) enacts a deeming provision in that behalf dispensing with the formal committal order against the newly added accused. Under that provision it is provided that where the Court proceeds against any person under sub-section (1) then 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 or trial was commenced; in other words, such person must be deemed to be an accused at the time of commitment because it is at that point of time the Sessions Court in law takes cognizance of the offence.

7. In the above context it will be useful to refer to a decision of this Court in Raghubans Dubey v. State of Bihar (AIR 1967 SC 1167 : (1967) 2 SCR 423 : 1967 Cri LJ 1081), where this Court has explained what is meant by taking cognizance of an offence. The appellant was one of the 15 persons mentioned as the assailants in the First Information Report. During the investigation the police accepted the appellant's plea of alibi and filed a charge-sheet against the others for offences under Sections 302, 201 and 149 IPC, before the Sub-Divisional Magistrate. The Sub-Divisional Magistrate recorded that the appellant was discharged and transferred the case for inquiry to another Magistrate, who, after examining two witnesses, ordered the issue of a non-bailable warrant against

the appellant, for proceeding against him along with the other accused under Section 207A of the old Code. The order was confirmed by the Sessions Court and the High Court and in further appeal to this Court is was held first, that there could be no discharge of the appellant as he was not included in the charge-sheet submitted before the Magistrate by the police and, second that the appellant could be proceeded against along with other accused under Section 207-A CrPC and this Court confirmed the order of the Magistrate. One of the contentions urged before this Court was that the Magistrate had taken cognizance of the offence so far as the other accused were concerned but not as regards the appellant and with regard to this contention Sikri, J. (as he then was) observed as follows :

In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence. As pointed out by this Court in Pravin Chandra Mody v. State of Andhra Pradesh ((1965) 1 : SCR 269 : AIR 1965 SC 1185 : (1965) 2 Cri LJ 250) the term "complaint" would include allegations made against persons unknown. If a Magistrate takes cognizance under Section 190(1)(a) on the basis of a complaint of facts he would take cognizance and a proceeding would be instituted even though persons who had committed the offence were not known at that time. The same position prevails, in our view, under Section 190(1)(b).

8. It will thus appear clear that under Section 193 read with Section 209 of the Code when a case is committed to the Court of Sessions in respect of an offence the Court of Sessions takes cognizance of the offence and not of the accused and once the Sessions Court is properly seized of the case as a result of the committal order against some accused the power under Section 319(1) can come into play and such Court can add any person, not an accused before it, as an accused and direct him to be tried along with the other accused for the offence which such added accused appears to have committed from the evidence recorded at the trial. Looking at the provision from this angle there would be no question of reading Section 319(1) subject or subordinate to Section 193.

9. As regards the contention that the phrase "any person not being the accused" occuring in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in column 2 of the charge-sheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal Court are included in the said expression.

10. The decision of Andhra Pradesh High Court in Patananchala China Lingaiah v. The State (supra) relied upon by the appellants has erroneously regarded the change in phraseology made in Sections 193 and 209 of the current Code as inconsequential and has further failed to note the impact of the deeming provision introduced for the first time in clause (b) of Section 319(4). That decision must be held to be erroneous.

11. In our view, the High Court was right in confirming the order passed by the learned Additional Sessions Judge against the two appellants and the appeal is, therefore, dismissed.

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