

Dharam Pal & Others

v.

State of Haryana & Another

(Y.K. Sabharwal,J.,Tarun Chatterjee and P.P. Naolekar,Jj.,)

(Supreme Court Of India)

Criminal Appeal No. 148 Of 2003 | 01-12-2004

1. This case was directed to be heard by a three-Judge Bench in view of the conflict of opinion in the decisions of two-Judge Bench in the cases of Kishori Singh v. State of Bihar (JT 2000 (7) SC 564), Rajinder Prasad v. Bashir (2001 (8) SCC 522) and SWIL Ltd. v. State of Delhi (2001 (6) SCC 670).

2. Learned counsel for the parties have brought to our notice two other decisions which have a direct bearing on the question sought to be determined. First is the decision in the case of Kishun Singh v. State of Bihar (1993 (2) SCC 16). The other is a three-Judge Bench decision in the case of Ranjit Singh v. State of Punjab (1998 SCC (Cri) 1554). Ranjit Singh case (1998 SCC (Cri) 1554) has disapproved the observations made in Kishun Singh case (1993 (2) SCC 16) which are to the effect that the Sessions Court has power under S.193 of the Code of Criminal Procedure (for short the Code) to take cognizance of the offence and summon other persons whose complicity in the commission of the trial can prima facie be gathered from the materials available on record. According to the decision in Kishun Singh case (1993 (2) SCC 16) the Sessions Court has such a power under S.193 of the Code. As per Ranjit Singh case (1998 SCC (Cri) 1554), from the stage of committal till the Sessions Court reaches the stage indicated in S.230 of the Code, that court can deal with only the accused referred to in S.209 of the Code and there is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused. The effect of this conclusion is that the accused named in column 2 and not put up for trial cannot be tried while exercising power under S.193 read with S.228 of the Code. This means that even when the Sessions Court applies its mind at the time of framing of charge and comes to the conclusion from the material available on record that, in fact, offence is made out against even those who are shown in column 2, it has no power to proceed against them and has to wait till the stage under S.319 of the Code reaches, namely, commencement of the prosecution evidence. The effect is that in less serious offences triable by a Magistrate, he would have the power to proceed against those who are mentioned in column 2, if on the basis of material on record he disagrees with the police conclusion, but, as far as serious offences triable by the Court of Session are concerned, that court will have to wait till the stage of S.319 of the Code is reached. It, however, appears that in a case triable by the Court of Session, in law, a Magistrate would have no power to summon for trial an accused mentioned in column 2 to be tried with other accused and, to that extent, the impugned order of the High Court may have to be set aside but immediately the

question involved herein would arise when the matter would be placed before the Sessions Court.

3. Prima facie, we do not think that the interpretation reached in Ranjit Singh case is correct. In our view, the law was correctly enunciated in Kishun Singh case⁴. Since the decision in Ranjit Singh case is of three-Judge Bench, we direct that the matter may be placed before the Hon'ble the Chief Justice for placing the same before a larger Bench.

4. Since further proceedings in the sessions trial have been stayed, we are of the view that the matter deserves to be decided expeditiously.