Palanisamy Gounder & Another

v.

State Represented by Inspector of Police

(Supreme Court Of India)

Y.K. SABHARWAL HON'BLE MR. JUSTICE P.P. NAOLEKAR

Criminal Appeal No. 288 Of 2005 | 11-02-2005

1. Leave granted.

2. The challenge in this appeal is to a judgment and order passed by the High Court confirming the order of the Court of Session passed in exercise of power under Section 319 of the Code of Criminal Procedure (for short "the Code") adding the two appellants as accused 4 and 5 in the Session trial in a case under Section 302 and other provisions of the Penal Code. The incident, subject-matter of the case, took place on 8.3.2000. Initially charge-sheet was filed on 21.6.2000 against five accused including the present two appellants. Later, on the application of the Public Prosecutor, the appellants were dropped as accused in terms of the order of the Court of Session dated 10.9.2001 which was as a result of further investigation. It appears that on 24.1.2002 prosecution examined various witnesses including PWs 1, 2 and 3, said to be the witnesses of the incident. It was on the basis of their testimony that an application under Section 319 of the Code was filed by the Prosecutor seeking summoning of the appellants as accused along with the three accused who were facing trial. Later, a similar application was also filed by one of the prosecution witnesses. The Court of Session, by order dated 22.11.2002, allowed both the applications and directed the appellants to be summoned as accused 4 and 5 in the case. The learned Additional Sessions Judge, inter alia, observed in the order that though the case against the persons proposed to be added was not on solid foundation but they had to be impleaded as accused in order to find out the real truth. It was observed that in order to find out the real truth the appellants deserved to be added as accused. We may only note that pending the decision of this appeal the trial has been concluded resulting in the conviction of the three accused since this Court had granted an order of stay of the trial as against the present appellants.

3. The power under Section 319 of the Code cannot be exercised so as to conduct a fishing inquiry. We have already noticed the observations of the learned trial Judge that though the case against the appellants was not on solid foundation but it was felt that to find out the real truth they deserved to be added as accused. The manner in which the power under Section 319 deserves to be exercised has been laid down in Michael Machado v. Central Bureau of Investigation, II (2000) SLT 488=I (2000) CCR 298 (SC)=(2000) 3 SCC 262, holding that unless the Court is hopeful that there is a reasonable prospect of the case against the newly added accused ending in their conviction for the offence concerned, the Court shall refrain from adding them as accused. In Krishnappa v. State of Karnataka, V (2004) SLT 405=III (2004) CCR 202 (SC)=(2004) 7 SCC 792, a Bench of which one of us (Hon'ble Mr. Justice Y.K. Sabharwal) was a member, following Michael Machado (supra), it was said that : (SCC p. 795, para 9).

"9. In Michael Machado v. Central Bureau of Investigation (supra), construing the words `the Court may proceed against such person' in Section 319, Cr.P.C., this held that the power is discretionary and should be exercised only to achieve criminal justice and that the Court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. This Court further held that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has already proceeded and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. The Court, while examining an application under Section 319, Cr.P.C., has also to bear in mind that there is no compelling duty on the Court to proceed against other persons. In a mutshell, it means that for exercise of discretion under Section 319, Cr.P.C., all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused."

4. In view of the aforesaid, the impugned judgment and order deserves to be set aside. Accordingly, setting aside the order of the Court of Session and the impugned judgment and order of the High Court, we allow the appeal.