SUPREME COURT OF INDIA

Lok Ram

Vs

Nihal Singh and Another

Appeal (Crl.) 405 of 2006 (Arising Out of S.L.P. (Crl.) No. 1204 of 2004)

(Arijit Pasayat and S. H. Kapadia, JJ)

10.04.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

Appellant who has been directed to be impleaded as an accused in terms of Section 319 of the Code of Criminal Procedure, 1973 (in short the 'Code') challenges the order passed by learned Single Judge of the Rajasthan High Court at Jodhpur.

Background facts are as under:

Respondent No.1-Nihal Singh's daughters Saroj and Kanta were married to Ishwar Singh and Bhim Singh, both sons of Appellant, Lok Ram. Saroj died on 14.9.2001. On 2.9.2001, respondent Nihal Singh filed a complaint at the Police Station, Fatehabad (Haryana), alleging commission of offence punishable under Section 406 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and moved an application for seizure of articles purported to have been given as dowry. In the

complaint it was stated that on 14.9.2001 Saroj, daughter of complainant Nihal Singh died. When his nephew Mangal Singh went to meet Saroj he learnt that she had been killed by her husband Ishwar Singh, brother in law- Bhim Singh and father in law-Lok Ram. Kerosene oil was poured on her and then she was set on fire. Police registered a case relating to offences punishable under Section 304(B) and 498 (A) read with Section 34 IPC. On the basis of the aforesaid report an investigation was started. Stand of the appellant, Lok Ram was that he was serving at a school at the alleged time of incident. Statements of various persons were recorded. During trial, complainant Nihal Singh moved an application under Section 319 of the Code. By order dated 6.9.2002 learned Sessions Judge rejected the application. On 4.12.2002, trial court convicted Ishwar Singh, Bhim Singh and their mother for commission of offences punishable under Section 304 (B) IPC and each was sentenced to undergo rigorous imprisonment for 7 years. Against the order dated 6.9.2002 a revision petition was filed. The High Court by the impugned judgment directed the trial court to proceed against the appellant by summoning him.

In support of the appeal, learned counsel for the appellant submitted that the true scope and ambit of Section 319 of the Code has not been kept in view. The trial had continued to a considerable extent. The power to summon an accused is an extra-ordinary power conferred on the court and is to be used sparingly. Only if compelling reasons exist for taking cognizance against a person against whom action had not been taken earlier then only Section 319 of the Code has to be pressed into service. The trial Court had given ample reasons for refusal to exercise the power. The High Court should not have interfered in the matter.

In response, learned counsel for the complainant- respondent No. 1 submitted that the trial court had not kept the correct parameters in view and, therefore, the High Court was justified in setting aside the order of the trial court and directing summons to be issued to appellant.

In Michael Machado and Anr. v. Central Bureau of Investigation and Anr. construing the words "the court may proceed against such person" in Section 319 of the Code, this Court 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 proceeded already 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 of the Code, has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, for exercise of discretion under Section 319 of the Code all relevant factors including those 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.

The above principles were highlighted in Krishnappa v. State of Karnataka .

The scope and ambit of Sec. 319 of the Code have been elucidated in several decisions of this Court. In Joginder Singh and another v. State of Punjab and another , it was observed:

"6. A plain reading of Sec. 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;."

It was further observed in paragraph 9:

"9. As regards the contention that the phrase 'any person not being the accused' occurred in Sec. 319 excludes from its operation an accused who has been released by the police under Sec. 169 of the Code and has been shown in column No. 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 Sec. 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."

In Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors. 1983 (1) SCC 2 after referring to the decision in Joginder Singh's case (supra), it was observed:-

"19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really un extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the Court concerned so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against respondent Nos. 2 to 5 will not prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it."

On a careful reading of Sec. 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and

not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence. Of course, as evident from the decision reported in Sohan Lal and others v. State of Rajasthan, the position of an accused who has been discharged stands on a different footing. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it. If it is satisfied that any person other than accused has committed an offence he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. 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. Under Sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of Sub-section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned.

It is to be noted that the trial court rejected the application only on the ground that the complainant was an interested witness and therefore, sufficient ground did not exist to take action against the accused persons. As noted above though the power is an extra-ordinary and is used only if compelling reasons exist; the factor which weighed is that the trial court does not appear to be relevant and, therefore, the High Court has rightly interfered in the matter. The impugned judgment does not suffer from any infirmity. However, we make it clear that we have not expressed any opinion on the merits of the case. Since the matter is pending long the trial court is requested to complete the trial as early as possible.

The appeal is accordingly dismissed.