

(2001) 09 RAJ CK 0002

Rajasthan High Court

Case No: Criminal Miscellaneous Petition No. 774 of 1997

Ranjeet Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision: Sept. 11, 2001**Acts Referred:**

- Arms Act, 1959 - Section 27, 30
- Criminal Procedure Code, 1973 (CrPC) - Section 173, 193, 319
- Penal Code, 1860 (IPC) - Section 173, 27, 30, 307

Citation: (2002) 4 WLN 511**Hon'ble Judges:** H.R. Panwar, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

H.R. Panwar, J.

This criminal misc. petition has been filed by the petitioner challenging the order dt. 25.6.1997 passed by learned Additional Sessions Judge No. 1, Sri Ganganagar in Sessions Case No. 53/96, whereby the learned Sessions Judge took cognizance of the offences u/s 307 I.P.C. and Sections 27 and 30 of Arms Act against the petitioner and one Bakar Singh @ Bikar Singh.

2. Aggrieved by the aforesaid order, the petitioner Ranjeet Singh has filed the present petition.

3. I have heard learned Counsel for the parties. Perused the order impugned and the record of the case.

4. First Information Report No. 99/94 was lodged by one Gamdur Singh at Police Station, Matiloratan against four persons namely Smt. Sujan Kaur, Raghuveer Singh, Ranjeet Singh and Bikar Singh for offences u/s 307 I.P.C. and Section 27 of the Arms Act. After investigation, police filed charge-sheet u/s 173 of the Cr.P.C. against

Raghuveer Singh and Sujan Kaur. However, after investigation, police reached to the conclusion that no offence is made out against the petitioner Ranjeet Singh and one Bikar Singh. The complainant filed a protest petition before the learned Judicial Magistrate, Sri Ganganagar. Vide order dt 4.5.1995, the learned Magistrate reached to the conclusion that no prima facie offence is made out against the petitioner Ranjeet Singh and one Bikar Singh and accordingly, the protest petition filed by the complainant was rejected and the case was committed to the Court of learned Sessions Judge, Sri Ganganagar vide order dt. 4.5.1995. Vide order dt. 4.8.1995, learned Sessions Judge, Sri Ganganagar transferred the case to learned Additional Sessions Judge No. 1, Sri Ganganagar for trial which was registered as Sessions Case No. 53/96. On 18.10.1995, learned Additional Public Prosecutor filed an application u/s 193 Cr.P.C, whereby it was requested that cognizance be taken against the petitioner Ranjeet Singh and one Bikar Singh for the aforesaid offences. Vide order dt. 25.6.1997, the learned trial Court took cognizance against the petitioner Ranjeet Singh and one Bikar Singh for the offences u/s 307 I.P.C. and under Sections 27 and 30 of the Arms Act.

5. It is contended by the learned Counsel for the petitioner that after having committed the case to the Sessions Court, no fresh enquiry was conducted and no evidence was adduced by the prosecution and as such there was no evidence before the learned trial Court as envisaged in Section 319 Cr.P.C. on the basis of which cognizance can be taken against the petitioner and, therefore, the trial Court fell in error in taking cognizance of the aforesaid offences against the petitioner and summoning him for trial.

6. Learned Counsel for the petitioner has relied on a judgment of the Hon"ble Supreme Court in Ranjit Singh v. State of Punjab AIR 1998 SCW 3249 and contended that once the trial Court took cognizance of the offences noticed above against the accused persons, who have been committed for trial in pursuant to the committal order of the learned Judicial Magistrate, the only other stage when the Court is empowered to add any other person to the array of the accused, is after reaching evidence collection when powers u/s 319 of the Cr.P.C. can be invoked. He further contended that the power u/s 319 of the Cr.P.C. can be exercised only when evidence is recorded by the trial Court during the course of trial and not on the basis of material placed on record by the investigating agency. In Ranjit Singh v. State of Punjab (supra), the Hon"ble Supreme Court observed as under:

Now it is well neigh settled that "evidence" envisaged in Section 319 of the Code is the evidence tendered during trial of the case if the offence is triable by a Court of Session. The material placed before the committal Court cannot be treated as evidence collected during enquiry or trial.

7. Section 319(1) envisages that it must appear from the evidence tendered in the course of any enquiry or trial that any person not being the accused has committed any offence for which he could be tried together with the accused. The Hon"ble

Supreme Court in *Ranjit Singh v. State of Punjab* (supra) further held that power u/s 319 of the Cr.P.C. can be exercised only if it so appears from the evidence at the trial and not otherwise and as such Section 319(1) Cr.P.C. contemplates existence of same evidence appearing in the course of trial wherefrom the Court can prima facie conclude that the person not arraigned before it, is also involved in the commission of crime for which he can be tried with those already named by the police in the report u/s 173(2) Cr.P.C.

8. According to the learned Counsel for the petitioner, the learned trial Court neither framed charges nor recorded evidence and, therefore, on the date of passing of the order impugned, there was no evidence on which trial Court could have taken the cognizance.

9. Learned Public Prosecutor is unable to dispute this position. The case in hand is squarely covered by the judgment rendered by the Hon"ble Court in *Ranjit Singh v. State of Punjab* (supra) and in my considered opinion, the order impugned cannot be sustained and is liable to be quashed.

10. Accordingly, this miscellaneous petition succeeds and it is hereby allowed. Order impugned dt. 25.6.1997 is set aside and quashed. However, it is made clear that this would not prejudice to the powers of Additional Sessions Judge to add any person in the array of accused u/s 319 Cr.P.C. Record of the trial Court be sent forthwith.