
(1990) 11 AHC CK 0146

Allahabad High Court

Case No: Criminal Misc. Application No. 8119 of 1982

Krishna Lal alias Kale

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Nov. 20, 1990

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 319, 482
- Penal Code, 1860 (IPC) - Section 323, 324

Citation: (1990) 14 ACR 780

Hon'ble Judges: D.P.S. Chuahan, J

Bench: Single Bench

Advocate: Naradra Kumar and Vinai Singh, for the Appellant;

Final Decision: Allowed

Judgement

D.P.S. Chuahan, J.

By means of this petition u/s 482 Code of Criminal Procedure Petitioner-Krishna Lal alias Kale has sought the relief for quashing of the proceedings in criminal case No. ... of 1982 u/s 323/324 IPC police station Mandi District Sharanpur wherein the applicant has been summoned u/s 319 Code of Criminal Procedure .

2. I have heard Learned Counsel for the Petitioner and Learned Counsel for the opposite party.

3. Brief facts of the case are that a first information report was lodged by one Moh. Yamin on 27-1-1981 at police station Mandi District Saharanpur u/s 323/324 IPC which was registered as case crime No. 23 of 1981, wherein Krishna Lal. Khairati Lal father of the applicant, and one Banarsi Dass were alleged to be the accused-persons. The police, after investigation, submitted the charge-sheet only against Khairati Lal and Banarasi Dass and no charge-sheet was submitted against the applicant.

4. The complainant Mohd. Yamin made an application to the trial court u/s 319 Code of Criminal Procedure for summoning the applicant whereupon the courts summoned the applicant.
5. Learned Counsel for the Petitioner submits that the power u/s 319 Code of Criminal Procedure is not available to the Magistrate at the stage when no evidence is taken, or recorded by him. The papers relating to investigation would not constitute evidence within the meaning of this Section and accordingly the Magistrate has acted without jurisdiction in granting the application of the complainant Mohd. Yamin by summoning the applicant against whom no charge-sheet was submitted by the police.
6. There seems to be substance in the argument. The power u/s 319 Code of Criminal Procedure is not the power which is available to the Magistrate before setting in motion the proceedings of trial against the persons before him. In the present case, the proceedings on the basis of the charge-sheet submitted against Khairati Lal and Banarasi Dass were not set in motion and no evidence was recorded by the Magistrate before the time when the application for summoning the applicant was moved by Mohd. Yamin. The Magistrate acquires the jurisdiction only after the evidence is taken. Section 319 Code of Criminal Procedure which empowers the Magistrate for summoning any person or for proceeding against such person against whom the offence appears to be committed is quoted hereunder:
- 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.
- (2) Where such person is not attending the court, he may be arrested or summoned, as the circumstances of the case may require for the purpose aforesaid.
- (3) Any person attending the court, although not [under arrest or upon a summons, may be detained by such court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
- (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 if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced.

The above Section has clearly provided that in the course of inquiry into, or trial of an offence if it appears from the evidence that any person not being accused has committed any offence, the court may proceed against him. In the course of inquiry, the trial of an offence means when the Magistrate has proceeded with the inquiry, or trial of an offence and recorded the evidence. It is the evidence which is recorded by the Magistrate can be the basis for proceeding against any such person who is not accused before him. Under the Evidence Act also the police investigation papers and the FIR would not constitute evidence for the purpose.

7. In view of what has been stated above, the petition deserves to be allowed.

8. The petition is allowed. The proceedings pending before the Addl. Chief Judicial Magistrate Saharanpur in case No. ... of 1982 State v. Khairati Lal under Sections 323/324 IPC, P.S. Mandi District Saharanpur so far as they relate to the applicant Krishna Lal alias Kale are hereby quashed.

9. The interim order dated 17-12-1982 passed by this court is discharged.