

(2002) 08 AHC CK 0199

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 7435 of 2002

Abdul Salam

APPELLANT

Vs

State of Uttar Pradesh and
Another

RESPONDENT

Date of Decision: Aug. 20, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 319

Citation: (2003) CriLJ 216

Hon'ble Judges: U.S. Tripathi, J

Bench: Single Bench

Advocate: Mohd. Arif, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

U.S. Tripathi, J.

This petition u/s 482, Cr. P. C. has been filed for setting aside the order dated 5-6-2002 passed in Sessions Trial No. 535 of 2000 State of U. P. v. Bhoora and others summoning the applicant for trial along with other accused.

2. An F.I.R. was lodged by opposite party No. 2 against four unknown persons with the allegations that on 28-9-1999 at about 8 a.m. four unknown persons abducted his brother Pramod. On the basis of above F.I.R. a case at crime No. 557 of 1999 u/s 364, I.P.C. was registered at P. S. Deoband, district Saharanpur. After investigation police submitted charge-sheet against three persons namely Bhoora @ Meharban, Munshi @ Mursalin and Usman under Sections 364/120B, I.P.C. The cognizance was taken against above persons by the Magistrate and the case was committed to the Court of Sessions.

3. Before Sessions Judge, an application was moved by the prosecution for summoning applicant Abdul Salam in the case for trial along with other co-accused mainly on the ground that he was also involved in the offence.
4. The learned Sessions Judge on considering the evidence of victim Pramod held that the applicant was also involved in the offence punishable under Sections 364/120B, I.P.C. and therefore, he summoned him u/s 319, Cr. P. C. for trial along with other accused by the impugned order. This order has been challenged in this application.
5. Heard the learned counsel for the applicant and the learned A.G.A. and perused the record.
6. In the instant case the victim Pramod alias Motu was examined in the Court. He stated that Bhoora alias Meharban and Munshi had kidnapped him by tying clothe on his eyes and his hand and took him into a jungle where they opened cloth from his eyes. He asked them to release him, but they told that talk of ransom was going on at the house of Abdul Salam and Islam and he would be released after receiving ransom money. He further stated that Bhoora and Munshi told him that on 23rd they served ransom money and then he was released on 24-10-1999. His statement clearly indicated that applicant Abdul Salam was also involved in the kidnapping of the victim and demand of ransom from his family members. Thus, there was prima facie involvement of the applicant.
7. The learned counsel for the applicant relied on Apex Court decision in [Michael Machado and Another Vs. Central Bureau of Investigation and Another](#), This decision has no application on the facts of the present case, because in the said case an application u/s 319, Cr.P.C. was moved after examination of as many as 54 witnesses and the Magistrate allowed the application; held that if the order of the Magistrate is to sustain, the proceedings in respect of newly added persons are to be recommenced afresh, which means that the entire massive evidence thus far collected and the time which the Court has thus far spent for recording evidence of such large number of witnesses, besides the cost involved for all concerned to reach up to the present stage, would all become, for all practical purposes, a waste a colossal waste. Therefore, it was not necessary at the stage to bring such two more additions to the array of the accused at the cost of such a de novo trial. No such situation arose in this case as only one witness was examined prior to passing of impugned order.
8. Further reliance was placed on Single Judge decision of this Court in Pradeep Kumar v. State of U.P., 2001 (42) ACC 1021 in which it was held that if a person was already named as accused in the F.I.R. and the charge sheet was not submitted against him, the provisions of Section 319, Cr.P.C. cannot be invoked. This principle of law was not accepted by this Court in subsequent decision in case of Nausad alias Pappu v. State of U.P. 2002 (44) ACC 231 : 2000 All LJ 98 for the reasons given in the

said judgment.

9. Moreover, the above decision in Pramod Kumar has irnpliedly been overruled by the Apex Court in the case of 2002 (1) ACR 419 (SC) in which it was held that the Sessions Judge has summoned 4 accused u/s 319, Cr.P.C. who were named in the F.I.R., but charge sheet was not submitted against them, on the ground that two witnesses corroborated the role of those persons in the alleged incident. The order of Sessions Judge was challenged before this Court and this Court set aside the said order by holding that Section 319, Cr.P.C. cannot be invoked by the Court when a person named in the F.I.R. is not charge sheeted.

10. Disagreeing with the above observation, the Apex Court held as below :--

"In our view, the impugned order is, on the face of it, illegal and erroneous. It is against the provisions of Section 319, Cr.P.C. and the decisions rendered by this Court interpreting the same in [Kishun Singh and Others Vs. State of Bihar](#), this Court considered a case where a FIR was lodged naming 20 persons including the two appellants as assailants of the deceased who died in the occurrence. After investigation, police submitted its report u/s 173, Cr.P.C. showing 18 persons other than two appellants as offenders. The Magistrate committed those 18 persons named in the report to the Court of Session u/s 209, Cr.P.C. to stand trial. Before Sessions Court, an application u/s 319 of the Code was filed praying hat remaining two accused be summoned and arraigned as accused. The Sessions Court impleaded them as co-Accused. That order was finally challenged before this Court and the Court dismissed the appeal by holding that Section 319 can be invoked both by the Court having original jurisdiction as well as the Court to which the case has been committed or transferred for trial. Similar is the view taken [Girish Yadav and Others Vs. State of Madhya Pradesh](#),

11. As such, the applicant was rightly summoned in view of the evidence of the victim Pramod showing his prima facie involvement in the offence. The application, therefore, has no force and is liable to be rejected.

12. The application is, accordingly, rejected.