Ved Prakash Vs State of U.P. and Another

Court: Allahabad High Court

Date of Decision: Nov. 21, 2002

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 190, 397, 482

Citation: (2003) CriLJ 2080 : (2003) 94 RD 554

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

Bench: Single Bench

Advocate: Devendra Dahma, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

U.S. Tripathi, J.
This application u/s 482, Cr.P.C. has been filed for quashing the order dated 23-8-2002 passed by Additional District

and Sessions Judge, Fast Track Court No. 4, Saharanpur in Criminal Revision No. 255 of 2002 and order dated 17-4-2002 passed by Judicial

Magistrate, Deoband district Saharanpur in Criminal Case No. 346 of 2002.

2. The facts giving rise to this application briefly put are that Shiv Kumar, opposite party No. 2 lodged a report on 10-1-2001 at P. S. Deoband,

district Saharanpur against the applicant and six other persons with the allegations that on 10-1-2001 at about 9 a.m. he came out of his house for

sending his son Rajan to school and observed that the applicant and other co-accused armed with country made pistols and lathi dandas came to

his house and observing him they fired on him by guns and country made pistol. However, he was saved and did not sustain injuries, but his son

Rajan sustained pellet injuries. Hearing sound of firing his brother Brahma Pal and Om Pal came out of their house and the applicant and other co-

accused attacked on them and caused injuries with lathi danda. The occurrence was witnessed by several persons.

3. On the basis of above report, a case at crime No. 15 of 2001 was registered under Sections 147 148 149 323 307 IPC against the applicant

and 7 other persons. After investigation, the police submitted charge-sheet against 7 persons and the applicant was not challaned.

4. On coming to know that applicant was not challaned, the opposite party No. 2 moved an application before the learned Magistrate for

summoning the applicant for trial along with other co-accused on the ground that the police wrongly did not submit charge-sheet against him while

there was sufficient evidence against him.

5. The learned Magistrate on hearing learned Counsel for the prosecution held that on perusal of the evidence collected during investigation prima

facie case under Sections 147 148 149 307 325 323 and 504, IPC was also made out against the applicant. The learned Magistrate, accordingly,

summoned him by the impugned order dated 18-7-2001.

6. Aggrieved with the above order, the applicant moved application before the Magistrate for recall of the order dated 18-7-2001. The learned

Magistrate rejected the above application, vide order dated 17-4-2002.

7. Aggrieved with the above orders, the applicant filed criminal revision No. 255 of 2002 before the Sessions Judge, Saharanpur. The above

revision was heard and dismissed by the impugned order dated 23-8-2002 by Additional Sessions Judge, Fast Track Court No. 4 on the ground

that there was no illegality or irregularity in the order of the Magistrate.

8. The above orders have been challenged in this application.

9. Heard Sri Devendra Dhama, learned counsel for the applicant and the learned A.G.A.

10. A preliminary objection was raised by the learned A.G.A. that the applicant had preferred a revision before the Sessions Judge against the

order of the Magistrate and therefore, he cannot file application u/s 482, Cr.P.C. to circumvent the provisions of Section 397(3), Cr.P.C. as held

by the Apex Court in the case of Rajinder Prasad Vs. Bashir and Others,

11. On the other hand, learned counsel for the applicant contended that the application u/s 482, Cr.P.C. is maintainable even on dismissal of the

revision of the applicant. In support of his above contention, he placed reliance on Full Bench decision of this Court in H.K. Rawal and Another

Vs. Nidhi Prakash and Another, The Apex Court in recent decision of Rajinder Prasad v. Bashir (supra) clarified the scope of Section 482,

Cr.P.C. in the case a revision at the instance of applicant was dismissed as below :--

We are of the opinion that when the earlier revision petition filed u/s 397 of the Code had been dismissed as not pressed, the accused-

respondents could not be allowed to invoke the inherent powers of the High Court u/s 482 of the Code for the grant of the same relief. We do not

agree with the arguments of the learned counsel for the respondents that as the earlier application had been dismissed as not pressed, the accused

had acquired a right to challenge the order adding the offence u/s 395 of the Code and arraying four persons as accused persons by way of

subsequent petition u/s 482 of the Code. The object of criminal trial is to render public justice and to assure punishment to the criminals keeping in

view that the trial is concluded expeditiously. Delaying tactics or protracting the commencement or conclusion of the criminal trial are required to

be curbed effectively, lest the interest of public justice may suffer. For exercising power u/s 482 of the Code the learned Judge of the High Court

relied upon a judgment of this Court in Krishnan and another Vs. Krishnaveni and another, A perusal of the aforesaid judgment, however, shows

that the reliance by the learned Judge was misplaced. This Court in Krishnan''s case (supra) had held that though the power of the High Court u/s

482 of the Code is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have

already invoked the revisional jurisdiction u/s 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or

misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the

process or miscarriage of justice by exercise of jurisdiction u/s 482 of the Code. It was further held, ""Ordinarily, when revision has been barred by

Section 397(3) of the Code, a person-accused/complainant cannot be allowed to take recourse to the revision to the High Court u/s 397(1) or

under inherent powers of the High Court u/s 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section

397(2) of the Code.

12. Thus, it is clear that only in cases where this Court finds that there has been failure of justice or misuse of judicial mechanism or procedure or

an order was not correct, this Court may in its discretion, prevent the abuse of process or miscarriage of justice by exercise of jurisdiction u/s 482,

Cr.P.C.

13. The next contention of the learned counsel for the applicant was that the case under hand was exclusively triable by the Court of Session,

therefore, Magistrate had no power to add any other accused as the scope of Section 209, Cr.P.C. is limited. In support of his above contention,

he placed reliance on the Apex Court decision in the case of Raj Kishore Prasad Vs. State of Bihar and another,

14. The facts of the case of Raj Kishore Prasad (supra) were that during investigation, two witnesses claimed to have seen and heard before hand

the appellant had exhorted the accused to kill the deceased, whereafter the actual assailant is said to have assaulted the deceased. The investigation

was conducted by the local police officers, which was supervised by Sub-Divisional Officer, Buxor and Superintendent of Police, Buxor. During

the course of supervision, it transpired that there was not sufficient evidence or reasonable ground for suspicion that the appellant was involved in

the crime and he was thus found to be innocent, moreso when those two witnesses had not come forward to own their version before the

supervising high officers. It is on that basis that the police filed report against the actual assailant only, on the basis that the appellant was not

involved in the crime. When the papers were laid before the Chief Judicial Magistrate, Buxor, the first informant made an application requiring the

Magistrate to exercise his powers to summon the appellant so as to send him to stand trial along side the accused sent up by the police, before the

Court of Session. The Chief Judicial Magistrate dismissed the application of the first informant which led to a revision petition by the first informant

before the Court of Session. The Court of Session allowed the revision petition and desired of the Chief Judicial Magistrate issuance of warrant of

arrest of the appellant to face trial. The appellant then moved to the High Court u/s 482, Cr.P.C. praying for quashing of the orders of the Court of

Session. The High Court dismissed the same and therefore, the appellant went before the Apex Court inter alia contending that at the stage set for

employing Section 209, Cr.P.C. the Chief Judicial Magistrate has no power u/s 319 of the Code or otherwise to add an accused in addition to the

one facing commitment.

15. After discussing the scope of Section 319, Cr.P.C., the Apex Court held that Sub-section (1) of Section 319 makes it clear that it operates in

an on-going inquiry into, or trial of, an offence. In order to apply Section 319, it is thus essential that the need to proceed against the person other

than the accused appearing to be guilty of offence, arises only on evidence recorded in the course of any inquiry or trial. Proceedings before a

Magistrate u/s 209, Cr.P.C. are patently not trial proceedings and were never considered so at any point of time historically. There has never been

any doubt on that account. Before the amendment of the Code of Criminal Procedure in the present form, commitment proceedings had the

essential attributes of an enquiry and were termed as such. Now do they continue to be so is the core question, to determine and spell out the

powers of the Magistrate u/s 209, Cr.P.C. If proceedings u/s 209, Cr.P.C. continue to be an inquiry, Section 319, Cr.P.C. would be obviously

attracted, subject of course to deciding whether the material put forth by the investigation could be termed as ''evidence'', as otherwise no evidence

is recordable by a Magistrate in such proceedings.

16. It was further held in the said case that it is thus manifest that in the sphere of the limited functioning of the Magistrate, no application of mind is

required in order to determine any issue raised, or to adjudge anyone guilty or not, or otherwise or pronounce upon the truthfulness of any version.

The role of the Magistrate thus is only to see that the package sent to the Court of Session is in order, so that it can proceed straightway with the

trial and that nothing is lacking in content, as per requirement of Sections 207 and 208 of the Code of Criminal Procedure. Such proceedings thus,

in our opinion do not fall squarely within the ambit of ""inquiry"" as defined in Section 2(g) of the Code of Criminal Procedure, ...

Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Section 209 Cr. P. C. is forbidden to apply his mind to the

merit of the matter and determine as to whether any accused need be added or subtracted to face trial before the Court of Session.

17. The above decision is on the scope of Section 319, Cr. P. C. Undisputedly, the provisions of Section 319, Cr. P. C. cannot be invoked by the

Magistrate in a case exclusively triable by the Court of Session because while initiating committal proceeding he does not inquire into matter or

proceed with the trial.

18. From the facts of the present case, as concluded above, it is clear that the learned Magistrate had not summoned the applicant by exercising

his power u/s 19, Cr. P. C. It appears that while passing the impugned order, the Magistrate had taken recourse to Chapter XIV (Section 190 to

199) of Cr. P. C.

19. The power of the Magistrate taking cognizance u/s 190, Cr. P. C. has been considered by the Apex Court in the decision of SWIL Ltd. v.

State of Delhi JT 2001 (60) SC 405 ; AIR 2001 SC 2747.

20. In the said case, F.I.R. was lodged against two persons. During investigation, it was revealed that respondent No. 2 was the Managing

Director of another sister company and was transferred. Because of the stay order issued by the High Court, it was not possible for the police to

interrogate respondent No. 2 and to ascertain whether he was involved in the conspiracy. He was, therefore, not joined as accused in the charge-

sheet submitted by the police, but his name was shown in column No. 2, which was meant for the accused, who was not sent for trial. On the basis

of said charge-sheet, the Metropolitan Magistrate issued summons against all accused shown in the F.I.R. On the next day, he also issued

summons to the respondent No. 2. That part of the order was challenged by him by filing a petition before the High Court. The High Court allowed

the petition holding that the Court was totally unjustified in summoning the petitioner and the petitioner was not shown in the column of accused

person in the charge-sheet. Relying on Section 319, Cr.P.C., the High Court held that such persons could be summoned by the Court u/s 319,

Cr.P.C. only after the evidence has been recorded. The said order of the High Court was challenged before the Apex Court.

21. The Apex Court held as below :--

In our view, from the facts stated above it is clear that at the stage of taking cognizance of the offence, provisions of Section 190, Cr.P.C. would

be applicable. Section 190 inter alia provides that the Magistrate may take cognizance of any offence upon a police report of such facts which

constitute an offence. As per this provision, Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence,

the Magistrate u/s 204, Cr.P.C. is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide

whether process should be issued against particular person/persons named in the charge-sheet and also not named therein. For that purpose, he is

required to consider the FIR and the statements recorded by the police officer and other documents tendered along With charge-sheet. Further,

upon receipt of police report u/s 173(2), Cr.P.C., the Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) even if the police report

is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating officer and independently

applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the police. At this

stage, there is no question of application of Section 319, Cr.P.C. Similar contention was negatived by this Court in Raghubans Dubey Vs. State of

Bihar, by holding thus.

22. It was further held in the said case that further in the present case there is no question of referring to the provisions of Section 319, Cr.P.C.

That provision would come into operation in the course of any inquiry into or trial of an offence. In the present case, neither the Magistrate was

holding inquiry as contemplated u/s 2(g), Cr.P.C. nor the trial had started. He was exercising his jurisdiction u/s 190 of taking cognizance of an

offence and issuing process. There is no bar u/s 190, Cr.P.C. that once the process is issued against some accused on the next date, the

Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in

the charge-sheet.

23. The above decision was further approved by the Apex Court in the subsequent decision in Rajinder Prasad Vs. Bashir and Others, in which it

was held that u/s 190, Cr.P.C., a Magistrate had jurisdiction to take cognizance of offences against such persons also who have not been arrested

by the police as accused persons, if it appears from the evidence collected by the police that they were prima facie guilty of offence alleged to have

been committed. Section 209 of the Code prescribes that when in a case instituted on a police report or otherwise, the accused appears or is

brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session he shall commit, after

compliance with the provisions of Section 207 or Section 209, as the case may be, the case to the Court of Session and subject to the provisions

of the Code, pass appropriate orders. This section refers back to Section 190, as is evident from the words ""instituted on a police report"" used in

Section 190(1)(b) of the Code. While dealing with the scope of Section 190 this Court in Raghubans Dubey Vs. State of Bihar, held that the

cognizance taken by the Magistrate was of the offence and not of the offenders. Having taken cognizance of the offence, a magistrate can find out

who the real offenders were and if he comes to the conclusion that apart from the person sent by the police some other persons were also

involved, it is his duty to proceed against those persons as well.

24. Thus, in the instant case, the Magistrate had not summoned the applicant u/s 319, Cr.P.C. and therefore, the decision in Raj Kishore''s case

(supra) is distinguishable and the decisions of the Apex Court in M/s. SWIL Ltd."s case and that of Rajinder Prasad (supra) are applicable to the

facts of the present case and therefore, the Magistrate had ample power u/s 190, Cr.P.C. to add any other accused not challaned by the police, if

there is ground for proceeding against him. Therefore, the impugned orders do not suffer from any illegality or irregularity.

25. From the above discussions and observations 1 find that no special circumstances were spelt out in the petition for invoking the jurisdiction of

this Court u/s 482, Cr.P.C. and the application has no force.

The application is, accordingly, rejected.