Babulal and Others Vs State of M.P. and Others

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: July 22, 2005

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 161, 193, 319, 397, 482
Penal Code, 1860 (IPC) â€" Section 201, 306, 498A

Citation: (2006) 1 DMC 823 : (2005) 4 MPHT 153 : (2006) 1 MPJR 108 : (2005) 4 MPLJ 176 : (2005) 4 RCR(Criminal) 737

Hon'ble Judges: S.S. Jha, J

Bench: Single Bench

Advocate: R.K. Sharma, for the Appellant; M.P.S. Bhadoriya, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.S. Jha, J.

Short question involved in the revision is whether before commencement of the trial, Trial Court is competent to add additional accused.

Brief facts of the case are that after the challan was filed and at the stage of framing of charges against other co-accused, an application was filed

on behalf of the complainant that there is material on record to frame charges against the petitioners. Trial Court considered the material on record

and found that in the statements before police u/s 161, Cr.PC pama facie an offence under Sections 498A, 306 and 201, IPC is made out against

the petitioners and there is sufficient material on record to take cognizance against the petitioners for the aforesaid offences. It ordered to summon

the petitioners. Petitioners instead of appearing before the Trial Court have filed this revision challenging the order passed by the Trial Court.

Counsel for the petitioners submitted that petitioners can be summoned only after prosecution evidence is over. If police have not filed challan then

the Trial Court has no jurisdiction to take cognizance against the petitioners and issue summons to them. In support of his contention, Counsel for

the petitioners has relied upon the judgment in the case of Kishun Singh and Others Vs. State of Bihar, . In this case, it is held that a Court of

Session to which a case is committed for trial by the Magistrate can not u/s 319 of Cr.PC summon a person as accused whose name is not

mentioned in the police report, if no evidence is recorded by that Court. Section 319 of the Code can not be invoked in a case where no evidence

has been led at a trial wherefrom it can he said that the additional accused appear to have been involved in the commission of the crime alongwith

those already sent up for trial by the prosecution. The sweep of Section 319 is, therefore, limited in that it is an enabling provision which can he

invoked only if evidence surfaces in the course of an inquiry or a trial disclosing the complicity of a person or persons other than the person or

persons already arraigned before it. It is further held that however, the Court of Session has power u/s 193, Cr.PC to summon the person if his

involvement in the commission of crime prima facie appears from the record of the case. There is difference in the language of Section 193 of the

two Codes; under the old Code the Court of Session was precluded from taking cognizance of any offence as a Court of original jurisdiction

unless the accused was committed to it whereas under the present Code the embargo is diluted by the replacement of the words ""the accused"" by

the words ""the case"". Thus, once the case is committed to the Court of Session by a Magistrate under the Code the restriction placed on the

power of the Court of Session to take cognizance of an offence as a Court of original jurisdiction gets lifted thereby investing the Court of Session

complete and unfettered jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose

complicity in the commission of the crime can prima facie be gathered from the material available on record.

In the case of Rajender Prasad v. Bashir and Ors. 2002 SCC 28 it is held that 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 is required to be curbed effectively, lest the interest of public justice may suffer. Though power of the High Court u/s

482, Cr.PC 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, Cr.PC. 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 of

miscarriage of justice by exercise of jurisdiction u/s 482, Cr.PC. It is further held that a Magistrate has jurisdiction to take cognizance of offence

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 the offence alleged to have been committed. Section 209 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. The cognizance taken by the Magistrate was of the offences and not the

offenders. Having taken the 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 persons sent by the police some other persons were also involved, it is his duty to proceed against those persons as well.

Similarly, in the case of Tek Narayan Prasad Yadav v. State of Bihar [1999 SCC 356] three Judge Bench of the Apex Court has considered the

powers to issue process against a person, who is not charge-sheeted u/s 193 after having begun the trial and having recorded some evidence of the

prosecution. Such step of the Court of Session can not even remotely be termed as transgressing the affirmative views expressed in the case of

Kishun Singh (supra) and Nisar v. Stale of U.P. [1995 SCC 306]. Third case of Raj Kishore Prasad v. State of Bihar [1996 SCC772] had a

different fact situation, being of the pre-committal stage on the basis of which it was held that Section 319, Cr.PC was inapplicable. It was,

therefore, held that the conflict of judicial opinion need not be resolved in this case.

In the present case, the learned Sessions Judge after going through the record found that named accused have not been impleaded as accused and

has taken cognizance against them and issued summons to them. Since trial has not begun, therefore, Trial Court has jurisdiction to issue summons

u/s 193, Cr.PC in the light of the cases discussed above. Though the provisions of Section 319, Cr.PC will not be applicable in this case, but

powers u/s 193, Cr.PC are available with the Court of Session for summoning the accused. No error is committed by the Trial Court in

summoning the accused.

Revision has no merit and is dismissed. Consequently, M.C.P. No. 1111/04 for stay is dismissed. Trial Court is directed to proceed with the trial.