
(2018) 05 RAJ CK 0257

Rajasthan High Court (Jaipur Bench)

Case No: Criminal Revision No. 362 of 2018

Arun Kumar Gupta
@APPELLANT@Hash
State of Rajasthan &
Ors.

APPELLANT

Vs

RESPONDENT

Date of Decision: May 23, 2018

Acts Referred:

Prevention of Corruption Act, 1988 " Section 7, 13(1)(d), 13(2)#Code of Criminal Procedure,
1973 " Section 319

Citation: (2018) 05 RAJ CK 0257

Hon'ble Judges: DEEPAK MAHESHWARI, J

Bench: Single Bench

Advocate: A.K.Gupta, Mudita Sharma, V.S.Godara

Final Decision: Allowed

Judgement

1. This revision petition has been preferred on behalf of the accused-petitioner Arun Kumar Gupta assailing the Judgment dated 21.2.2018 passed by

learned Special Judge, Prevention of Anti Corruption Act, Kota in sessions case, no. 10/2005 whereby the trial court while acquitting the accused

Hemraj Nagar who was facing trial, has taken cognizance against the petitioner for the offence under Sec.7, 13(1)(d) read with Sec.13(2) of the

Prevention of Corruption Act, 1988 (for short as "Act of 1988"), and ordered to call him by way of warrant of arrest.

2. Heard learned counsel for the petitioner as also learned Public Prosecutor appearing for the State. Perused the relevant record.

3. On perusal of the record, facts in brief of the case transpire as follows:

FACTS IN BRIEF

The complainant Rameshwar Shrangi (PW-10) lodged a report in the office of Addl. S.P., ACB, Kota against the then Executive Engineer, PWD,

Kota stating that Mr.Arun Kumar Gupta was demanding bribe from him for making balance payment of Rs.1,70,868/-. He wants to get Mr.Gupta

trapped. After adopting due process, a trap was conducted and amount of Rs.2,000/- was recovered from the possession of cashier Hemraj Nagar

who told that he had received this money on behalf of Mr.Arun Kumar Gupta. After concluding investigation, charge-sheet came to be filed only

against Hemraj Nagar. Trial was conducted and vide judgment dated 21.2.2018, Hemraj Nagar was acquitted from the charges levelled against him,

but cognizance was taken against the present petitioner for the aforesaid offences.

SUBMISSIONS:

4. Learned counsel for the petitioner has raised many pleas in regard to the order impugned whereby cognizance has been taken against the petitioner.

His first argument is that there was no prosecution sanction issued qua the petitioner for proceeding against him for the offences punishable under

the Act of 1988. In this regard, he has drawn attention of this court to page no.23 of the Judgment impugned, wherein it has been observed as

under:

23. "bld vykok vkjksi i= ds voyksdu ls ;g Hkh tkfgj gksrk gS fd gsejkt ukxj ds fo:) ihOM03 ghjkyky eh.kk us vfHk;kstu Lohd`rh tkjh dh] rFkk v:.k

dqekj xqlrk ds fo:) jkT; ljdkj us vfHk;kstu Lohd`fr tkjh dh] ysfdu jkT; ljdkj ds vkns'k ÅfËœekad i- 2Å,Å¼2Å,Å½42Å,Å¼dk@d&3@f'k@02 fnukad 31-3-2004

,oa vkns'k ÅfËœekad i2Å,Å¼2Å,Å½42Å,Å¼dk@d&3@f'k@02 fnukad 17-1-2005 }kjk tkjh vfHk;kstu Lohd`fr foMÅ,ÅªkW dj yh x;hA -----

-----ÅfËœ,â€

5. Learned counsel for the petitioner has also contended that cognizance has been taken by the learned court below vide judgment dated 21.2.2018 in

regard to the offences which are said to have taken place on 27.3.2002. A long delay of almost 16 years is very much prejudicial to the defence which

could have been taken by the accused petitioner. After this long distance of time, cognizance could not have been taken. He has also contended that

the powers under Sec.319 Cr.P.C. under which cognizance has been taken are to be exercised very sparingly and in extra ordinary circumstances, but

this is not a situation in this case. He further contends that the learned trial court has exercised this power while deciding the case pending against the

main accused Hemraj Nagar. This is not the proper stage to take cognizance under Sec.319 Cr.P.C. This power could have been exercised only

during the pendency of the trial against the accused facing trial. He further contends that looking to the evidence available on record, there was no

justification to take cognizance against the present petitioner. Hence the order impugned qua the petitioner is without any substance and is liable to be

quashed and set aside.

6. Learned Public Prosecutor appearing for the State has vehemently opposed the prayer stating that in the FIR, specific allegation was made against

the petitioner Arun Kumar Gupta. Money recovered from Hemraj Nagar was taken by him at the instance and on behalf of Arun Kumar Gupta. In

fact he was the real culprit against whom cognizance has been rightly taken by the learned court below.

7. I have gone through the arguments advanced by both the sides as also the material available on record.

8. The relevant principles laid down by Hon'ble Apex Court in the Judgments relied upon by the learned counsel for the petitioner to support his

contention may be summarized as below.

On the point of necessity of prosecution sanction against the retired public servant, it has been held as follows in Chittaranjan Das V. State of

Orissa, (AIR 2011 SC 2893):

7. However, in the present case, we are faced with the situation in which Vigilance Department asked the State Government to grant sanction while

the appellant herein was in service which it refused. Not only that Vigilance Department sought for reconsideration of the decision by the State

Government which prayer was also rejected. In fact the State Government reiterated that there is no prima facie case against the appellant and the

assets held by him were not disproportionate to the known sources of his income. Mr. Tripathy points out that refusal to grant sanction under Section

19 of the Prevention of corruption Act, 1947 while the appellant was in service is of no consequence as undisputedly charge-sheet against the

appellant was filed and further the Court had taken cognizance of the offence and issued process after his retirement. He points out in the case of

N.Bhargavan Pillai (Supra) sanction sought for was refused but this Court did not find any illegality in that.

8. We do not find any substance in the submission of Mr. Tripathy and the decision relied on is clearly distinguishable. Sanction is a device provided by

law to safeguard public servants from vexatious and frivolous prosecution. It is to give them freedom and liberty to perform their duty without fear or

favour and not succumb to the pressure of unscrupulous elements. It is a weapon at the hands of the sanctioning authority to protect the innocent

public servants from uncalled for prosecution but not intended to shield the guilty. Here in the present case while the appellant was in service sanction

sought for his prosecution was declined by the State Government. Vigilance Department did not challenge the same and allowed the appellant to retire

from service. After the retirement, Vigilance Department requested the State Government to reconsider its decision, which was not only refused but

the State Government while doing so clearly observed that no prima-facie case of disproportionate assets against the appellant is made out.

Notwithstanding that Vigilance Department chose to file charge-sheet after the retirement of the appellant and on that Special Judge had taken

cognizance and issued process. We are of the opinion that in a case in which sanction sought is refused by the competent authority, while the public

servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of

Corruption Act is necessary after the retirement of Public Servant.(emphasis added) Any other view will render the protection illusory. Situation may

be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all

necessary and any exercise in this regard would be action in futility.

On inordinate delay in prosecution, Hon'ble Apex Court has observed as follows in Suresh V. Mahadevappa Shivappa, (AIR 2005 SC 1047):

12. We, therefore, set aside the impugned order of the High Court and of the Magistrate. The complaint is liable to be dismissed on the question of

inordinate laches on the part of the complainant himself. Viewed from any angle, we do not find any good reasons to maintain the order passed by the

learned single Judge of the High Court confirming the orders of the Magistrate. Accordingly, this appeal stands allowed and the judgment and order

dated 17.02.2004 in Criminal Revision Petition No. 932/2000 of the High Court of Karnataka at Bangalore is set aside. State of Bihar Vs. Uma

Shankar Ketriwal, (AIR 1981 SC 641)

3. Learned counsel for the appellant State has challenged the impugned order not only on the ground that its finding about the police report not

disclosing any offence against the respondents was erroneous but also with the argument that the delay in the conclusion of the trial was not a

justification for quashing the proceedings. We have heard him at length and although there is much to be said against the impugned order in so far as

the finding about the police report is concerned, we cannot lose sight of the fact that the trial has not made much headway even though no less than 20

years have gone by. Such protraction itself means considerable harassment to the accused not only monetarily but also by way of constant attention to

the case and repeated appearances in court, apart from anxiety. It may well be that the respondents themselves were responsible in a large measure

for the slow pace of the case inasmuch as quite a few orders made by the trial magistrate were challenged in higher courts, but then there has to be a

limit to the period for which criminal litigation is allowed to go on at the trial stage. In this view of the matter we do not consider the present case a

proper one for our interference in spite of the fact that we feel that the allegations disclosed the commission of an offence which we regard as quite

serious.

On the point as to how and at what stage cognizance can be taken under Sec.319 Cr.P.C, it has been held as follows in *Brijendra Singh V. State of*

Rajasthan, (AIR 2017 SC 2839)

10. It also goes without saying that Section 319 Code of Criminal Procedure, which is an enabling provision empowering the Court to take appropriate

steps for proceeding against any person, not being an accused, can be exercised at any time after the charge-sheet is filed and before the

pronouncement of the judgment, except during the stage of Section 207/208 Code of Criminal Procedure, the committal etc., which is only a pre-trial

stage intended to put the process into motion.

12. The moot question, however, is the degree of satisfaction that is required for invoking the powers Under Section 319 Code of Criminal Procedure

and the related question is as to in what situations this power should be exercised in respect of a person named in the FIR but not charge-sheeted.

These two aspects were also specifically dealt with by the Constitution Bench in *Hardeep Singh's* case and answered in the following manner:

95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319

Code of Criminal Procedure, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge

Bench of this Court in *Vikas v. State of Rajasthan* [MANU/SC/0894/2013 : (2014) 3 SCC 321], held that on the objective satisfaction of the court a

person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not

being the Accused has committed an offence for which such person could be tried together with the already arraigned Accused persons.

105. Power Under Section 319 Code of Criminal Procedure is a discretionary and an extraordinary power. It is to be exercised sparingly and only in

those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion

that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the

evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of

cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than

prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead

to conviction. In the absence of such satisfaction, the court should refrain from exercising power Under Section 319 Code of Criminal Procedure. In

Section 319 Code of Criminal Procedure the purpose of providing if "it appears from the evidence that any person not being the Accused has

committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which

such person could be convicted". There is, therefore, no scope for the court acting Under Section 319 Code of Criminal Procedure to form any opinion

as to the guilt of the accused. (emphasis supplied) Hon'ble Supreme Court has held in *Ranjit Singh Vs. Punjab* (AIR 1998 SC 3148) that there

is no other stage to take cognizance except under Sec.319 Cr.P.C after cognizance has once been taken by Sessions Court pursuant to committal

order.

19. Thus, since the Sessions Court takes cognizance of the offence pursuant to the committal order 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 under Section 319 of the Code can be invoked.

We are unable to find any other power for the Sessions Court to permit addition of new person or persons to the array of the accused. Of course it is

not necessary for the Court to wait until the entire evidence is collected for exercising the said powers.

In *Sarabjit Singh And Anr. V. State of Punjab And Anr.* (AIR 2009 SC 2792), it has been laid down as follows:-

17. The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the

court. Has the criterion laid down by this Court in *Municipal Corporation of Delhi (supra)* been satisfied is the question' Indisputably, before an

additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of

extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its

jurisdiction should be exercised sparingly.

We may notice that in *Y. Saraba Reddy v. Puthur Rami Reddy and Anr.* MANU/SC/2099/2007 : (2007)4SCC773 , this Court opined:

...Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for

taking action against a person against whom action had not been taken earlier. The word ""evidence"" in Section 319 contemplates that evidence of

witnesses given in Court...

An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate

other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse

dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction.

For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which

would reasonably lead to conviction of the person sought to be summoned.

9. On applying the principles referred to above into the facts of the case in hand, it appears that the cognizance taken by the learned trial court against

the petitioner is not justified. In the case in hand, prosecution sanction was earlier issued qua the petitioner which was later on withdrawn vide order

dated 31.3.2004 and the order dated 17.1.2005. It has been stated by the learned counsel for the petitioner that the petitioner had retired from service

during the pendency of trial. In view of judicial pronouncement in Chitranjan Das case (supra), the petitioner could not have been prosecuted even

after his retirement notwithstanding the fact that no sanction for prosecution was necessary after his retirement. There is no dispute on the point that

the prosecution sanction has not been issued qua the petitioner.

10. In the facts & circumstances of the case, it is apparently clear that the occurrence which is said to have taken place on 27.3.2002, cognizance has

been taken by the trial court with inordinate delay while acquitting the accused Hemraj Nagar on 21.2.2018. Pursuant to such order, if cognizance

order is allowed to stand and the trial is initiated after such an inordinate delay, the defence of accused is certainly to be prejudicially effected.

Moreover, initiating the proceedings with an inordinate delay does not find favour with the courts in the judgment referred to above.

11. Power under Sec.319 Cr.P.C. is an extra ordinary power which could be exercised sparingly and not casually and in cavalier manner. Further, it is

to be observed that this power can be exercised at any stage only during trial i.e. before conclusion of the trial. The additional accused who is called

upon to face the trial under Sec.319 Cr.P.C, is supposed to face the trial alongwith the original accused in ongoing case. But in the matter in hand,

petitioner Arun Kumar Gupta has been called upon to face the trial by the same order by which the original accused Hemraj Nagar has been

acquitted. On this count also, order impugned passed is not sustainable.

12. In view of whatever has been stated above, the order taking cognizance for the aforesaid offences qua the petitioner does not appear to be in

consonance with the judicial pronouncements and the provisions of law. The order deserves to be and is accordingly quashed and set aside. The

revision petition preferred by the petitioner thus stands allowed.