

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 121 OF 2012
(arising out of S.L.P. (Criminal) No. 3592 of 2011)

JILE SINGH

Appellant(s)

VERSUS

STATE OF U.P.& ANR

Respondent(s)

O R D E R

R.M. LODHA, J.

Leave granted.

2. A certain Bharat Lal Sharma was done to death on October 26, 2008. His father (respondent No. 2 herein) informed the Police Station Kosikalan on the next day, i.e., October 27, 2008 at 8 a.m. that he received an information in the morning at about 7 a.m. that his son Bharat Lal Sharma had been murdered and his dead body was lying in the agricultural field of Ghure son of Gaisi, 'Jat' resident of Tumaure. On receipt of this information, he (respondent No. 2 herein) went to the spot and found that the body of his son was lying in blood. His son was killed with some sharp edged weapon the previous night. He requested the police to register First Information Report

(FIR) against unknown accused persons and take appropriate action in the matter. On this information, an FIR was registered and investigation commenced. On conclusion of the investigation, the Investigating Officer submitted charge-sheet naming one Hari Singh as an accused having committed the murder of Bharat Lal Sharma. On the basis of the material collected by the Investigating Officer, no case was found out against the present appellant-Jile Singh and the Investigating Officer concluded that the appellant has been falsely named in the course of investigation.

3. On May 2, 2009, the Chief Judicial Magistrate, Mathura, committed the accused-Hari Singh to the Court of Sessions Judge, Mathura for trial. It was then that the complainant-respondent No. 2 herein filed a private complaint under Section 200 of the Code of Criminal Procedure, 1973 (for short, 'the Code') in the court of Judicial Magistrate, Mathura, against the present appellant and one Jayveer Singh for the murder of his son Bharat Lal Sharma.

4. The Chief Judicial Magistrate, Mathura, after recording the statements under Section 202 of the Code, issued summons to the appellant on January 3, 2011. Aggrieved by that order, the appellant filed Criminal Revision before the Allahabad High Court which came to be

dismissed on March 10, 2011. It is from this order that the present Appeal, by special leave, has arisen.

5. Mr. Manoj Saxena, learned counsel for the appellant, submitted that the issuance of summons by the Chief Judicial Magistrate, Mathura, on a private complaint made by the respondent No. 2 after committal of accused-Hari Singh for the murder of Bharat Lal Sharma to the Sessions Court, was without jurisdiction. He would submit that addition of a new person to the array of the accused in a case pending before the sessions court can only be done by that court in exercise of the power under Section 319 of the Code and in no other way. In this regard, he relied upon decisions of this Court in the cases of Ranjit Singh Vs. State of Punjab¹ and Kishori Singh and Ors. Vs. State of Bihar and Anr.²

6. Mr. Ratnakar Dash, learned senior counsel for the respondent No. 1-State of Uttar Pradesh, and Mr. Vikram Patralekh, learned counsel for respondent No. 2-complainant, stoutly defended the impugned order. They submitted that the complaint filed by the complainant before the Magistrate was maintainable under Section 200 of the Code since the Investigating Officer on conclusion of the investigation did not name the appellant as accused

1 (1998) 7 SCC 149

2 (2004) 13 SCC 11

although there was material to that effect in the course of investigation. The learned senior counsel and the learned counsel for the respondents submitted that if on receipt of a report, the police takes up the investigation of a case and on completion thereof submits a charge-sheet against few persons and leaves the other persons involved in the crime by stating in the report that no case has been made out against such person, it is open to the aggrieved complainant to file a complaint under Section 200 of the Code and the Magistrate is empowered to issue summons. In this regard, they relied upon a decision of this Court in Hareram Satpathy Vs. Tikaram Agarwala & Ors.³ Mr. Ratnakat Dash, learned senior counsel for the respondent No. 1, also referred to another decision of this Court in Kishan Lal Vs. Dharmendra Bafna & Anr.⁴ and submitted that if a right has been given to the complainant to be given notice of filing of the police report and to file protest petition, there is no impediment in the law for maintaining a complaint if persons involved in the crime have been left over by the police in the course of the investigation.

7. The present case, in our view, is squarely covered by the law laid down by this Court in the case of

³ 1978 (4) SCC 58

⁴ 2009 (7) SCC 685

Ranjit Singh (supra) and the subsequent decision in the case of Kishori Singh (supra) reiterating the same legal position. In Ranjit Singh (supra), this Court was concerned with the issue whether the sessions court can add a new person to the array of the accused in a case pending before it at a stage prior to collecting any evidence. The three Judge Bench that considered the above issue referred to various provisions of the Code, namely, Sections 204, 207, 208, 209, 225, 226, 227, 228, 229, 230 and 319 and held as under :

"19. So from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 of the Code, that court can deal with only the accused referred to in Section 209 of the Code. There is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused.

20. Thus, once 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."

8. The above legal position has been reiterated by this Court in a subsequent decision in the case of Kishori Singh (supra). The two Judge Bench in Kishori Singh (supra) considered some of the provisions of the Code and earlier decision of this Court in Ranjit Singh (supra) and two other decisions, namely, Raj Kishore Prasad Vs. State of Bihar⁵ and India Carat (P) Ltd. Vs. State of Karnataka⁶, and held as under :-

"9. After going through the provisions of the Code of the Criminal Procedure and the aforesaid two judgments and on examining the order dated 10-6-1997 passed by the Magistrate, we have no hesitation to come to the conclusion that the Magistrate could not have issued process against those persons who may have been named in the FIR as accused persons, but not charge-sheeted in the charge-sheet that was filed by the police under Section 173 CrPC.

10. So far as those persons against whom charge-sheet has not been filed, they can be arrayed as "accused persons" in exercise of powers under Section 319 CrPC when some evidence or materials are brought on record in course of trial or they could also be arrayed as "accused persons" only when a reference is made either by the Magistrate while passing an order of commitment or by the learned Sessions Judge to the High Court and the High Court, on examining the materials, comes to the conclusion that sufficient materials exist against them even though the police might not have filed charge-sheet, as has been explained in the latter three-Judge Bench decision. Neither of the contingencies has arisen in the case in hand."

5 (1996) 4 SCC 495

6 (1989) 2 SCC 132

9. In the present case, if the order passed by the Chief Judicial Magistrate, Mathura, in issuing summons against the appellant on the complaint filed by the respondent No. 2-complainant, which has been confirmed by the High Court, is allowed to stand, it would mean addition of the appellant to the array of the accused in a pending case before the Sessions Judge at a stage prior to collecting any evidence by that court. This course is absolutely impermissible in view of the law laid down by a three Judge Bench of this court in the case of Ranjit Singh (supra). The stage of Section 209 of the Code having reached in the case, it was not open to the Chief Judicial Magistrate, Mathura to exercise the power under Section 204(1)(b) of the Code and issue summons to the appellant. The order of the Chief Judicial Magistrate, Mathura is totally without jurisdiction. The High Court was clearly in error in not keeping in view the law laid by this Court in the case of Ranjit Singh (supra) followed by a subsequent decision in the case of Kishori Singh (supra) and in upholding the illegal order of the Chief Judicial Magistrate, Mathura.

10. The two decisions, namely, Hareram Satpathy (supra) and Kishan Lal (supra) relied upon by the learned

senior counsel and counsel for the respondents have no application at all to the case in hand.

11. We, accordingly, allow this Appeal and set aside the order of the High Court dated March 10, 2011 impugned in this present Appeal and the order of the Chief Judicial Magistrate, Mathura, dated January 3, 2011.

12. Needless to say that in the course of trial, on the basis of the evidence if it appears to the Sessions Judge that any person not being the accused in the trial has committed the offence and the case is made out for exercise of power under Section 319 of the Code for proceeding against such person, it will be open to the Sessions Judge to proceed accordingly and the present order will not come in the way in exercise of his power under Section 319 of the Code.

.....J.
(R.M. LODHA)

NEW DELHI;
JANUARY 12, 2012

.....J.
(H.L. GOKHALE)