

NON-REPORTABLE
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1964 OF 2010
(Arising out of S.L.P. (Criminal) No.4128 of 2010)

Bangarayya

....Appellant

Versus

State of Karnataka & Ors.

....Respondents

JUDGMENT

AFTAB ALAM, J.

1. Heard counsel for the parties.
2. Leave granted.
3. On a report filed by the appellant on September 1, 2002, a case was registered against 17 persons named as accused in the report. The police after investigation, submitted charge sheet under sections 143, 147, 451, 323, 427, 504, 506 read with section 149 of the Penal Code against all the accused named in the FIR, excepting accused nos. 2, 3 & 6. The learned magistrate proceeded with the trial summoning only those accused against whom the charge sheet was submitted. During the trial, prosecution witnesses 1 & 2 (examined on August 24, 2007 and February 2, 2008 respectively) in their deposition narrated the occurrence in detail and also

named accused nos.2, 3 & 6 (respondent nos.2-4 herein), against whom the police had not submitted the charge sheet, among the offenders. The prosecution then filed a petition under section 319 of the Code of Criminal Procedure (hereinafter 'the Code') for summoning those three accused as well for facing trial. The magistrate by a brief order passed on August 18, 2009, rejected the application. He took the view that the two witnesses were related to the complainant and no independent witness had till then been examined before him. He further observed that it was an old case in which the accused had been appearing in court from 2003. Summoning of the three more accused would further delay the matter. Some of the accused were "teachers and well known persons" and they would suffer due to the delay caused by summoning the additional accused.

4. Against the judgment and order passed by the magistrate, the appellant filed an application under section 482 of the Code which was rejected by the High Court by order dated December 15, 2009. The High Court declined to interfere in the matter because the petition for summoning the three respondents as accused was made after long delay.

5. We are unable to see where was the delay. As noted above, the two prosecution witnesses were examined on August 24, 2007 and February 2, 2008 respectively and the petition under section 319 of the Code was filed

on March 6, 2008, i.e. a month and four days after the second witness was examined. In those facts it is quite unreasonable to hold that the application was made after long delay and was, therefore, liable to be rejected.

6. The reason assigned by the trial court is equally untenable. The two witnesses being related to the complainant or the accused already before the court, being “teachers and well known persons” can be no ground to reject the petition under section 319 of the Code for summoning some other persons as well for facing the trial.

7. We are, therefore, constrained to interfere in the matter. The orders passed by the High Court and the magistrate are set aside and the matter is remitted to the magistrate to consider the petition under section 319 of the Code afresh and pass an appropriate order on it, in accordance with law.

8. In the result the appeal is allowed but with no order as to costs.

.....J
(AFTAB ALAM)

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

**New Delhi,
October 8, 2010**