Michael Machado & Anr vs Central Bureau Of Investigation & Anr on 17 February, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1127, 2000 AIR SCW 734, 2000 CRILR(SC&MP) 265, 2000 (1) UJ (SC) 540, 2000 (2) LRI 86, 2000 (1) SCALE 624, 2000 (3) SCC 262, 2000 CALCRILR 203, 2000 SCC(CRI) 609, 2000 (3) SRJ 331, (2000) 2 JT 531 (SC), 2000 CRILR(SC MAH GUJ) 265, 2000 UJ(SC) 1 540, (2000) 18 OCR 441, (2000) 2 RECCRIR 75, (2000) 1 SCJ 551, (2000) SC CR R 445, (2000) 2 EASTCRIC 461, (2000) MAD LJ(CRI) 481, (2000) 1 CURCRIR 298, (2000) 2 SUPREME 326, (2000) 27 ALLCRIR 747, (2000) 1 SCALE 624, (2000) 40 ALLCRIC 795, (2000) 2 BLJ 607, (2000) 1 CHANDCRIC 119, (2000) 2 ALLCRILR 199, (2000) 2 CRIMES 23, (2000) 5 BOM CR 860

Bench: K.T. Thomas, A.P. Misra

PETITIONER:
MICHAEL MACHADO & ANR.

Vs.

RESPONDENT:
CENTRAL BUREAU OF INVESTIGATION & ANR.

DATE OF JUDGMENT: 17/02/2000

BENCH:
K.T. Thomas & A.P. Misra

JUDGMENT:

THOMAS, J.

L...I...T.....T.....T.....T.....T.....T.....T..J When the trial in a criminal case against four accused persons proceeded to the penultimate stage (after examining 54 witnesses by then) the Metropolitan Magistrate, before whom the case was being tried, ordered two more persons to be arrayed as accused. If the order of the Magistrate is to sustain, the proceedings in respect of the newly added persons are to be re-commenced afresh, which means that the entire massive evidence thus far collected and the time which the court has thus far spent for recording the evidence of such a large number of witnesses, besides the cost involved for all concerned to reach up to the present stage, would all become, for all practical purposes, a waste a colossal waste. Is it so very necessary at this belated stage to bring such two more additions to the array of the accused at the cost of such a de

novo trial?

When the persons, against whom the Metropolitan Magistrate passed the order, challenged it before the High Court of Bombay a learned single judge of the High Court felt it unnecessary to interfere on the premise that the affected persons can approach the trial court and pray for discharging them from the case. Aggrieved by the said order of the learned single judge the concerned persons have filed this petition for special leave to appeal. Leave is granted.

The background in which the Metropolitan Magistrate passed the order against the appellants can now be shown with more details. First appellant was Chief Manager of the Malad Branch of the Corporation Bank at Mumbai, and the second appellant was Chief Manager of the Wadala Branch (Mumbai). A complaint was lodged with the police by the Deputy Manager of the Bank with the allegations that a huge amount, more than half a crore of rupees, had been defrauded by certain persons and the Bank was put to great loss to the above extent. An FIR was registered on its basis for certain offences and after completion of the investigation the police laid two charge-sheets before the said Metropolitan Magistrate arraigning 4 persons as accused for offences under Section 120-B, 420, 467, 468 and 471 of the Indian Penal Code. The Central Bureau of Investigation which conducted the investigation and laid the charge-sheet has stated in the final report that the 4 accused along with certain other persons secured loans from the bank to the tune of more than half a crore of rupees in the names of existing as well as non-existing persons from three branches of the Corporation Bank (Malad and Wadala Branches at Mumbai and Library Branch at Ahmedabad) on the strength of bogus share certificates purported to have been issued from various companies. The CBI has further stated that the materials collected by them are insufficient to show the involvement of three officers of the Bank (including the two appellants) in the perpetration of the said crime. However the CBI has recommended to the Bank for initiating departmental actions against those officers.

The Metropolitan Magistrate, after perusing the said charge-sheet filed against 4 accused persons, felt that the CBI was shielding the appellants from prosecution and hence he sought the explanation from the CBI regarding that aspect. After considering the explanation offered by the CBI officials learned Magistrate felt that the investigating officer has committed the offence under Section 219 of the Indian Penal Code (making a report corruptly or maliciously, knowing that it is contrary to law), and issued notice to him. But at the same time learned Magistrate decided to implead the appellants as additional accused in the criminal cases. That order of the Magistrate was challenged by the concerned investigating officer and the High Court quashed that order, but made an observation that it is open to the Magistrate to consider at the appropriate stage whether any action is necessary under 319 of the Code of Criminal Procedure (for short the Code). Following is what the High Court has then observed:

> As far as the present case is concerned, there is absolutely no material in evidence so far to proceed against those 2 bank officers. The learned counsel for the petitioner submitted that there may be some material against them to proceed departmentally, but nothing is presently on record of the Court. He further stated that in case such material or evidence comes before the court the court can pass order under Section

319 to join them as accused.

The trial which commenced as against the 4 accused persons progressed substantially. Until 49 witness were examined by the prosecution the trial Magistrate had no reason to feel the necessity to implead the appellants. But when evidence of the remaining 3 witnesses was recorded it appeared to the Magistrate that appellants are also involved in the crime. So he passed the order on 16.10.1999, the relevant portion of which reads thus:

After perusal of the evidence of Mrs. Sathe, Dayanand Hejmadi and Naushad, similarly after going through Ex.16, I am satisfied that there is sufficient evidence against Branch Manager Mr. N. Ramamurthy as well as Branch Manager Mr. Michael Machado as alleged in present case along with other accused persons. The evidence on record is sufficient to show that they were also party to the conspiracy, cheating and forgery of valuable security.

It was the said order which the appellants challenged before the High Court. While dismissing that challenge learned Single Judge of the High Court has, inter alia, observed thus: In my opinion, it would be improper to interfere with the exercise of his jurisdiction u/s 319(1). The sufficiency of the material placed before him cannot be gone into by the High Court unless it is a case of no evidence at all. No doubt Mr. Jha argued hat in the evidence of the three witnesses nothing has come on record as against the present petitioners but as pointed out by Mr. Mehta, there is some indication that the petitioners could be concerned with the case though I am making it clear that I am not giving any final opinion on this point. All I wish to say is that this certainly is not a case where this Court in its power u/s 482 of the Criminal Procedure Code will interfere with the discretionary power of the learned magistrate passed u/s 319(1) of the Cr.P.C.

In this context we may point out that even according to the trial magistrate the first 49 witnesses did not utter a single word against any of them; last witnesses disclosed their role. We have perused the evidence of the aforesaid three witnesses. No doubt there is a reference in their evidence to the role played by the appellants, but such reference is insufficient to make out a case of criminal conspiracy under Section 120B of the IPC against the appellants. The reason for the CBI to refrain from making the appellants as accused along with the other arraigned persons, has been stated that the evidence as against the appellants was too inadequate to send them as accused before a court of law. Following is the stand adopted by the CBI in that regard:

However, after investigation the petitioners were not charge-sheeted by the CBI but CBI recommended for initiation of regular departmental action for major penalty against the 2 petitioners. That as provided under CBI Crime Manual the case investigated by the CBI are referred to the Ministry or Departments concerned for taking regular departmental action against the public servants under the disciplinary

> rules instead of launching prosecution in the court of law under the following circumstances: -
>
> (a) When in opinion of CBI there is inadequate evidence for a successful criminal prosecution but there is good evidence for departmental action.
>
> (b) When the charges established by the enquiry are breaches of departmental rules or misconduct not strictly amounting to criminal offences under the law.
>
> (c) When the departmental action is preferable to prosecution for some other important reasons.

Hence the CBI has chosen to recommend departmental proceedings against the appellants, instead of arraigning them as accused along with the four persons. We are not now concerned with the wisdom with which CBI has chosen the aforesaid course. We are only to see whether the action of the magistrate in joining the appellants as additional accused at that belated stage is legally sustainable.

Powers under Section 319 of the Code can be invoked in appropriate situations. This section is extracted below:

> 319. Power to proceed against other persons appearing to be guilty of offence.- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then-

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an

accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons.

In Municipal Corporation of Delhi vs. Ram Kishan Rohtagi & ors. {1983 (1) SCC 1} this Court has struck a note of caution, while considering whether prosecution can produce evidence to satisfy the court that other accused against whom proceedings have been quashed or those who have not been arrayed as accused, have also committed an offence in order to enable the court to take cognizance against them and try them along with the other accused. This was how learned Judges then cautioned:

> But we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.
>
> The court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub-section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re- examined.

The whole proceedings must be re-commenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite a large in number the court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the court should refrain from adopting such a course of action.

In the present case, as pointed out above, the prosecution has already examined quite a large number of witnesses and they were cross-examined by the defence. The Metropolitan Magistrate felt the need to start afresh only because next three witnesses disclosed something against the

appellants. They are:

(1) Mrs. Anuradha Anand Sathe, a Clerk- cum-Cashier of Malad Branch of the Corporation Bank.

(2) Dayanand Hejmadi, an officer in the saving Accounts Department of the Bank.

(3)Naushad Ali, Special Assistant attached to the same Branch.

The statements of those three witnesses were placed before us. No doubt the statements may create some suspicion against the appellants. But suspicion is not sufficient to hold that there is reasonable prospect of convicting the appellants of the offence of criminal conspiracy.

We strongly feel that a situation has not reached as to waste the whole massive evidence already collected by the trial court thus far, against the 4 accused arraigned in the case. Hence the order of the trial court in exercise of Section 319 of the Code has to be interfered with for enabling the trial to proceed to its normal culmination.

We, therefore, allow this appeal and set aside the impugned judgment of the High Court as well as the order of the Metropolitan Magistrate under challenge. We direct him to proceed with the trial with the existing accused arraigned before the court.