Y. Saraba Reddy vs Puthur Rami Reddy And Anr on 7 May, 2007

Equivalent citations: 2007 AIR SCW 6258, 2007 (4) SCC 773, AIR 2007 SC (SUPP) 981, (2007) 2 CRILR(RAJ) 623, (2007) 2 CURCRIR 352, (2007) 2 JCC 1560 (SC), (2007) 4 KER LT 362, (2007) 6 SCALE 555, (2007) 3 ALLCRILR 722, (2007) 58 ALLCRIC 573, (2007) 3 EASTCRIC 17, (2007) SCCRIR 1119, (2007) 3 ALLCRIR 2438, 2007 (2) SCC (CRI) 412, (2007) 2 ORISSA LR 394, (2007) 104 CUT LT 419, (2007) 3 RAJ LW 2599, (2007) 37 OCR 565, (2007) 3 SUPREME 1032, 2007 CRILR(SC&MP) 623, 2007 BOMCRSUP 505, (2007) 2 MAD LJ(CRI) 372, (2007) 54 ALLINDCAS 27 (SC), (2007) 2 RECCRIR 1014, 2007 CRILR(SC MAH GUJ) 623, (2008) 1 ANDHLT(CRI) 361

Author: Arijit Pasayat

Bench: Arijit Pasayat, P.K. Balasubramanyan, D.K. Jain

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           CASE NO.:
Appeal (crl.)  689 of 2007

PETITIONER:
Y. Saraba Reddy

RESPONDENT:
Puthur Rami Reddy and Anr

DATE OF JUDGMENT: 07/05/2007

BENCH:
Dr. ARIJIT PASAYAT, P.K. BALASUBRAMANYAN & D.K. JAIN

JUDGMENT:
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J U D G M E N T CRIMINAL APPEAL NO. 689 of 2007 (Arising out of SLP (Crl.) No.766 of 2006) Dr. ARIJIT PASAYAT, J

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Andhra Pradesh High Court dismissing the revision petitions filed by the appellant and the State questioning the correctness of the order passed by the learned VIth Additional Sessions Judge, Gooty, (Fast Track Court), Gooty.

3. Background facts as projected by the appellant in a nutshell are as follows:

4. On 26.07.1997 at about 6 p.m., while Yeddula Siva Prasad Reddy (hereinafter referred to as the 'deceased') was coming on a motorbike, accused persons armed with deadly weapons, attacked and killed him. Appellant who was examined as P.W.1 lodged complaint with the police and investigation was taken up. On an application made by the respondents in Crl.R.C.No.1551 of 2004, the Superintendent of Police, Anantapur District got the matter investigated by the Deputy Superintendent of Police, Guntakal and on the basis of his report, names of the present respondents were deleted from the array of accused. They were not included in the charge sheet filed on 07.11.1997. Thereafter, the case was committed to Sessions Court on 10.11.1997 and numbered as S.C.No.378 of 1998. There was delay in progress of the trial. P.W.1 was examined on 7.7.2004. Thereafter, a petition in terms of Section 319 of the Code of Criminal Procedure, 1973 (in short the 'Code') was filed for arraying the present respondents as accused. The learned Sessions Judge dismissed the petition by order, giving a somewhat conclusive finding that the present respondents have not participated in the offence.

5. The trial Court rejected the application made in terms of Section 319 of the Code primarily on the ground that the plea of alibi raised by the respondent was investigated by the Deputy Superintendent of Police under the instructions of the Superintendent of Police and on his satisfying about the substance in the plea of accused about their non-involvement. directed the omission of their names. Though their names were deleted from the array of accused their names were found in the FIR and statement of witnesses. Assailing the same, firstly the State filed Crl.R.C.No.1476 of 2004 and thereafter appellant (PW-1 the de facto complainant) filed Crl.R.C. No.1551 of 2004 before the High Court. The High Court found no infirmity in the trial Court's order and additionally found that the charge sheet was filed on 7.11.1997. Neither the public prosecutor nor the appellant took any steps immediately. Only on 7.7.2004 an application was filed. The High Court found that first of all the appellant and the public prosecutor should not have kept quiet for such a long period of about 7 years. The fact that they kept silent for such a long period, according to High Court, shows that the plea of alibi which was found to be true by the Special Investigating Officer who enquired into that aspect was true. The High Court also accepted that there was force in the contention that on account of political factions the respondents were falsely implicated and on account of change of government, the public prosecutor had filed the petition. Since the Deputy Superintendent of Police had found the plea of alibi to be correct, the fact that the witnesses during trial stated otherwise was really of no consequence.

6. In support of the appeal, learned counsel for the appellant submitted that the orders of the trial Court as well as that of the High Court cannot be maintained. The alleged occurrence took place on 26.7.1997. The charge sheet was filed on 7.11.1997 and charges were framed on 25.8.2003. The delay in framing of charges cannot in any way be attributed to the complainant. PW-1 was examined on 7.7.2004 and immediately after his evidence was recorded, the application in terms of Section 319 of the Code was filed. There was, therefore, no scope for the High Court to hold that there was delay in making the application. Before the charges were framed there was no scope for any application being filed in terms of Section 319 of the Code.

7. In response, learned counsel for the respondents submitted that after a thorough investigation, the Investigating Officer had accepted the plea of alibi. The High Court was justified in rejecting the

prayer made by the prosecution and the complainant.

8. We find that the High Court has failed to notice the fact that there was in fact no delay in making the application. Though the charge sheet was filed on 7.11.1997, charges were framed on 25.8.2003. The order sheet shows that the delay cannot in any way be attributed to the complainant. There is a basic fallacy in the approach of the High Court. It called for the file to be satisfied as to whether the enquiry conducted was to be preferred to the evidence of PW-1. If the satisfaction of the Investigating Officer or Supervising Officer is to be treated as determinative, then the very purpose of Section 319 of the Code would be frustrated. Though it cannot always be the satisfaction of the Investigating Officer which is to prevail, yet in the instant case the High Court has not found the evidence of PW-1 to be unworthy of acceptance. Whatever be the worth of his evidence for the purposes of Section 319 of the Code it was required to be analysed. The conclusion that the IO's satisfaction should be given primacy is unsustainable. The High Court was not justified in holding that there was belated approach.

9. The scope and ambit of Sec. 319 of the Code have been elucidated in several decisions of this Court. In Joginder Singh and another v. State of Punjab and another (AIR 1979 SC 339), it was observed:

> "6. A plain reading of Sec. 319 (1) which occurs in Chapter XXIV dealing with general provisions as to inquiries and trials, clearly shows that it applies to all the Courts including a Sessions Court and as such a Sessions Court will have the power to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused; ."

10. It was further observed in paragraph 9:

> "9. As regards the contention that the phrase 'any person not being the accused' occurred in Sec. 319 excludes from its operation an accused who has been released by the police under Sec. 169 of the Code and has been shown in column No. 2 of the charge sheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Sec. 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the Criminal Court are included in the said expression."

11. In Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors. (1983 (1) SCC 2) after referring to the decision in Joginder Singh's case (supra), it was observed:-

> "19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also

committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really un 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. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the Court concerned so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against respondent Nos. 2 to 5 will not prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it."

12. On a careful reading of Sec. 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence. Of course, as evident from the decision reported in Sohan Lal and others v. State of Rajasthan, (AIR 1990 SC 2158) the position of an accused who has been discharged stands on a different footing.

13. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it. If it is satisfied that any person other than accused has committed an offence he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. 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. Under Sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of Sub- section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned.

14. The above position was highlighted in Lok Ram v. Nihal Singh and Anr. (2006 (10) SCC 192).

15. The conclusion of the High Court after calling for the records from the Investigating Officer to satisfy itself and deciding whether version of PW-1 was to be accepted or not is a very unusual procedure adopted.

16. In the result, the High Court's order is clearly indefensible and is set aside. The trial Court shall take steps for proceeding against the respondents in terms of Section 319 of the Code. We make it clear that by allowing this appeal we are not expressing any opinion on the merits of the case.