

Hardei vs State Of U.P on 30 March, 2016

Equivalent citations: AIR 2016 SUPREME COURT 1615, 2016 (12) SCC 394, AIR 2016 SC (CRIMINAL) 684, 2016 (3) ALJ 449, (2016) 2 MADLW(CRI) 472, (2016) 2 MAD LJ(CRI) 382, (2016) 2 JLJR 333, (2016) 2 RECCRIR 608, 2016 CRILR(SC MAH GUJ) 365, (2016) 2 ALLCRIR 1363, (2016) 3 KCCR 2369, 2016 CRILR(SC&MP) 365, (2016) 2 CRILR(RAJ) 365, (2016) 161 ALLINDCAS 252 (SC), 2016 CALCRILR 3 1, (2016) 2 ALLCRILR 894, (2016) 2 GUJ LH 238, (2016) 64 OCR 57, (2016) 2 PAT LJR 429, (2016) 3 RAJ LW 2584, (2016) 3 SCALE 511, (2016) 2 UC 801, (2016) 94 ALLCRIC 496, (2016) 2 CRIMES 7, 2017 (3) SCC (CRI) 797

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Bench: Shiva Kirti Singh, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 186 OF 2016
[Arising out of S.L.P.(CrI.)No.3438 of 2014]

Hardei

....Appellant

Versus

State of U.P.

... .Respondent

J U D G M E N T

SHIVA KIRTI SINGH, J.

This appeal is directed against order dated 29.01.2014 by the Hon'ble High Court of Judicature at Allahabad dismissing Criminal Revision No.2554/2013 preferred by the appellant seeking relief against order dated 09.07.2013 passed by the Chief Judicial Magistrate, Amroha, the trial Court, summoning the appellant, in exercise of power under Section 319, Code of Criminal Procedure, to face trial in Sessions Trial No.9191 of 2010 (State Vs. Omkar & Ors.) arising out of Case Crime

No.1364 of 2010 under Sections 420/467/468/471/409, IPC pertaining to Police Station Amadpur, District Amroha, Uttar Pradesh.

Before advertng to the rival submissions, the relevant facts may be noted in brief. The FIR bearing No. 53 of 2010 leading to this case was lodged on 20th July 2010 by R.D. Sharma, the Project Director of a scheme under the Mahatma Gandhi National Rural Employment Guarantee Act (hereinafter referred to as 'MNREGA' Scheme). One Rahul Yadav, a Junior Clerk in the Amroha Block Office and one Omkar Singh were named as accused with allegation that they had, as per enquiry report, prima facie embezzled an amount to the tune of Rs.49 Lacs from official account for the MNREGA Scheme, thereby attracting offence under Section 409 IPC. In the Special Leave Petition there is reference to another FIR bearing No. 50 of 2010 dated 16th July, 2010 lodged by one Mr. Muneshwar Singh, Block Development Officer, Gangeshwari, (J.P. Nagar). In this FIR the same Rahul Yadav, Junior Clerk alone has been named as an accused with allegation of cheating and embezzlement in respect of an amount of Rs.25 lacs of MNREGA. However, in course of further hearing it was made clear by learned counsel for the appellant that the present proceeding does not arise from this FIR and the whole purpose of annexing a copy of this FIR was to draw attention of this Court to allegations to the affect that the appellant although signed cheques for withdrawal of money from MNREGA account, she was innocent and had been cheated by Rahul Yadav.

The written notes of arguments on behalf of the appellant also clarify that the instant proceedings arise only out of FIR No. 53 of 2010 leading to Crime No. 1364 of 2010. The first charge-sheet dated 3.10.2010 was only against Omkar Singh and the other was filed subsequently against accused Rahul Yadav, after he surrendered.

The criminal case progressed as Trial No. 9191 of 2010 and after some witnesses had been examined, an application under Section 319 of the Code of Criminal Procedure was filed by the Prosecution on 4.7.2013. The application discloses that the case was fixed for evidence and prosecution had already examined five witnesses including PW-1, R.D. Sharma. On the basis of evidence of prosecution witnesses recorded in the course of trial, it was urged in the application that involvement of Muneshwar Singh, the then Block Development Officer and the appellant Smt. Hardei, the then Block Pramukh of Kshetra Panchayat, Gangeshwari had emerged and such materials were also available in the statement of concerned witnesses recorded under Section 161 of Criminal Procedure Code. The prayer to summon both of them under Section 319 Cr.P.C. was considered by the learned Chief Judicial Magistrate, Amroha. He, after noticing in particular the statement made by R.D. Sharma as P.W.1, came to the conclusion that prima facie offence was made against both the proposed accused and hence the application was allowed by order passed on 9th July, 2013. As already noticed, the High Court affirmed the order of the Magistrate by rejecting Criminal Revision preferred by the appellant on 29.1.2014 and that order has given rise to the present appeal.

Mr. R. K. Kapoor, learned counsel for the appellant has relied heavily upon the fact that the appellant was not named as an accused in the FIR nor any charge-sheet was submitted against her after completion of investigation. He further submitted that the amount has been embezzled mainly by accused Rahul Yadav and Omkar Singh and therefore, the defence of the appellant that she was

illiterate lady who does not know even to sign much less reading or writing should have been accepted by the Magistrate and the High Court. It was pointed out that in the FIR lodged by co-accused Muneshwar Singh against Rahul Yadav, the defence of the appellant was clearly spelt out.

Learned counsel for the State of U.P., on the other hand supported the summoning order of Chief Judicial Magistrate as well as the order under appeal by the High Court. According to him, there is no denial of the fact that along with Muneshwar Singh, this appellant was the co-signatory and only with their signatures money could be withdrawn from the MNREGA account; therefore, in such a situation the statement emerging from the deposition of the complainant/informant R.D. Sharma, P.W.1 that amounts used to be withdrawn jointly by the appellant and the Muneshwar Singh, the Block Development Officer and hence they are also answerable for the embezzlement of the concerned amount could not have been ignored at the present stage in anticipation of defence of the appellant that she is illiterate and cannot sign her name and that she was duped or cheated by co-accused Rahul Yadav.

Having given our anxious consideration to the rival submissions, we find no good reason to interfere with the order under appeal. It is well accepted in criminal jurisprudence that F.I.R. may not contain all the details of the occurrence or even the names of all the accused. It is not expected to be an encyclopedia even of facts already known. There are varieties of crimes and by their very nature, details of some crimes can be unfolded only by a detailed and expert investigation. This is more true in crimes involving conspiracy, economic offences or cases not founded on eye witness accounts. The fact that Police chose not to send up a suspect to face trial does not affect power of the trial court under Section 319 of the Cr.P.C. to summon such a person on account of evidence recorded during trial. This is the factual scenario in the case at hand also.

It would not be proper for us to deal with detailed merits of the prosecution case or the defence case at this juncture. Hence, while dismissing the appeal, we make it clear that the observations made in the impugned orders or this order shall not have any adverse effect on the case of either of the parties. It is also made clear that the appellant shall be at liberty to take all the defence available to her, in accordance with law, in course of the trial. The appeal stands dismissed with the aforesaid observations.

.....J. [DIPAK MISRA]J. [SHIVA KIRTI SINGH]
New Delhi.

March 30, 2016.
