Supreme Court of India
Nisar And Another vs State Of U.P on 9 November, 1994
Equivalent citations: 1995 SCC (2) 23, JT 1995 (1) 135
Author: M M.K.
Bench: Mukherjee M.K. (J)

PETITIONER:
NISAR AND ANOTHER

Vs.

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT09/11/1994

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
ANAND, A.S. (J)

CITATION:
1995 SCC (2) 23 JT 1995 (1) 135
1994 SCALE (4)890

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by M.K. MUKHERJEE, J.- Special leave granted.

2.Appellant 1 is the brother-in-law of Shakyin who met with an unnatural death in her matrimonial home on 22-6-1991. Appellant 2 is his wife. On the following day i.e. on 23-6- 1991 Noor Mohammad, father of the deceased, lodged a first information report alleging that her husband, grandmother-in-law and the two appellants were responsible for her death. On that information a case was registered under Sections 304-B and 306 of the Indian Penal Code ('IPC' for short) against all of them and on completion of investigation the police submitted charge-sheet under Section 306 IPC only against the deceased's husband and grandmother-in-law. In due course the case was committed to the Court of Session by the Chief Judicial Magistrate, Orai ('Magistrate' for short) in accordance with Section 209 of the Criminal Procedure Code ('Code' for short).

3.When the matter came up for hearing before an Additional Sessions Judge of Orai, an application was moved on behalf of Noor Mohammad alleging that though during investigation sufficient materials were furnished to prove that the two appellants had also demanded a scooter as dowry and physically tortured and ill-treated the deceased the investigating agency did not submit charge-sheet against them and praying for invoking the provisions of Section 193 of the Code to summon them. The application was opposed on behalf of the appellants on the ground that in absence of any order of their committal in accordance with Section 209 of the Code the Court of Session could not summon them in exercise of power under Section 193 of the Code.

4.After hearing the parties and going through the statements recorded under Section 161 of the Code the learned Judge summoned the two appellants as, according to the learned Judge, a prima facie case was made out against them and Section 193 of the Code empowered him to summon them.

5.Aggrieved by the above order the appellants moved the High Court in revision which was rejected with the following order:

> "Learned counsel for the applicants has submitted that the learned Judge has exercised his power under Section 193 CrPC and not under Section 319 CrPC which could not be exercised as no evidence has yet led in the case. In my opinion, the submission is not correct. Under Section 319 CrPC even on the basis of existing material person appearing to be guilty may be summoned. The learned Sessions Judge has perused the material and has found that there are allegations against the applicants. Merely because Section 193 has been mentioned by the court below, it will not invalidate the order."

6. Hence this appeal.

7. It was submitted on behalf of the appellants that neither the provisions of Section 193 nor those of 319 of the Code empowered the Court of Session to pass the impugned order. According to the learned counsel for the appellants in absence of any order committing the appellants to the Court of Session, the learned Judge could not have issued process against the appellants to stand trial by invoking Section 193 of the Code. The learned counsel next submitted that having regard to the fact that Section 319 of the Code could be invoked only at a stage when evidence was led, the High Court was not justified in upholding the order of the learned Judge relying upon the said section, as admittedly that stage was yet to be reached.

8. As regards the second contention of the appellants it must be said that in view of the plain and unambiguous language of Section 319 of the Code, the earlier quoted reason which weighed with the High Court in sustaining the order of the learned Judge is patently incorrect. The power under Section 319(1) can be exercised only in those cases where involvement of persons other than those arraigned in the charge-sheet comes to light in the course of evidence recorded during the enquiry or trial. As that stage has not yet reached the appellants could not have been summoned invoking Section 319 of the Code.

9. As regards the other contention of the appellants we may mention that this Court has in Kishun Singh v. State of Bihar1 categorically rejected a similar contention with the following observations: (SCC p. 30, para 16) "Thus, on a plain reading of Section 193, as it presently stands once the case is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case under Section 209 to the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record."

10.Since we are in respectful agreement with the principle so laid down, the contention of the appellants in this regard must be rejected. The appeal is, therefore, dismissed.