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KRISHNAPPA
v.
STATE OF KARNATAKA

AUGUST 25, 2004

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[Y.K. SABHARWAL AND D.M. DHARMADHIKARI, JJ.]

Code of Criminal Procedure, 1973 :

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S. 319—Summoning of other persons as accused—Appellant along with others arrayed as accused—Proceedings against him quashed u/s. 482—After conclusion of prosecution evidence State filing application u/s. 319 for summoning the appellant—Trial court rejecting the application—High Court setting aside order of trial court and directing trial of appellant—Held, for exercise of discretion all relevant factors have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence has come on record implicating the person sought to be added as an accused—On facts, exercise of discretion by trial court did not call for interference by High Court—Order of High Court set aside.

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Michael Machado & Anr. v. Central Bureau of Investigation & Anr., [2000] 3 SCC 262, relied on.

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Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors., [1983] 1 SCC 1, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 934 of 2004.

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From the Judgment and Order dated 27.2.2004 of the Karnataka High Court in Crl. R.P. No. 554 of 2000.

Prakash Shrivastava for the Appellant.

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Sanjay R. Hegde for the Respondent.

The following Order of the Court was delivered :

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Leave granted.

This appeal is directed against the impugned judgment of the High Court passed in revisional jurisdiction whereby the order dated 5th February, 2000 passed by the trial Magistrate dismissing the application of the State filed under Section 319 Cr. P.C. has been set aside. By the impugned judgment the appellant has been arrayed as an accused to be tried with twelve other accused. B

The case before the Magistrate relates to an incident of the year 1993 which led to certain simple injuries and damage to some crops. Twelve accused are facing trial. The appellant was also arrayed as one of the accused but the High Court had quashed the case against him in the year 1995 on a petition filed by him under Section 482 Cr. P.C. C

The State filed an application under Section 319 Cr.P.C. before the Magistrate for summoning the appellant as an accused after the conclusion of prosecution evidence examining 17 prosecution witnesses and recording of the statements of the accused under Section 313 Cr.P.C. by the trial Magistrate. The learned Magistrate by a detailed order, after examination of the evidence, dismissed the application, *inter alia*, of noticing that on evidence, the possibilities of the appellant being convicted were remote. The trial court also noticed the factum of the quashing of the proceedings against the appellant in the year 1995. D E

The High Court, in the impugned judgment has come to the conclusion that some of the prosecution witnesses have deposed about the presence of the appellant on the date of the incident and also about the instigation made by him to the other accused persons to destroy the crops and tree grown by PW-1. F

It has been repeatedly held that the power to summon an accused is an extraordinary power 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. G

In the present case, we need not go into the question whether *prima facie* the evidence implicates the appellant or not and whether the H

A possibility of his conviction is remote, or his presence and instigation stood established, for in our view the exercise of discretion by the Magistrate, in any event of the matter, did not call for interference by the High Court, having regard to the facts and circumstances of the case.

B Mr. Sanjay Hegde, learned counsel appearing for the respondent/ State, contends, relying upon the decision of this Court in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors.*, [1983] 1 SCC 2, that the trial court had the power to summon the appellant in exercise of power under Section 319 Cr.P.C. even when the proceedings had been earlier quashed qua him and the trial court committed serious illegality in observing to the contrary and thus the High Court rightly reversed the order of the Magistrate. Though an order under Section 319 Cr.P.C. summoning a person can be made on fulfillment of the conditions stipulated therein even when the proceedings had earlier been quashed, but in the present case the Magistrate did not dismiss the application merely on the ground of the proceedings having been quashed against the appellant. The Magistrate first on examination of evidence, came to the conclusion that the possibilities of the appellant being convicted were remote and, thereafter, made a passing reference to the factum of the proceedings having been quashed in the year 1995. In *Ram Kishan Rohtagi's* case (Supra), while holding that despite proceedings having been quashed, a person can be proceeded with, a note of caution was added that the power under Section 319 Cr. P.C. was discretionary and had to be used sparingly only on the existence of compelling reasons.

F In *Michael Machado & Anr., v Central Bureau of Investigation & Anr.*, [2000] 3 SCC 262, construing the words "the court may proceed against such person" in Section 319 Cr.P.C., this Court held that the power is discretionary and should be exercised only to achieve criminal justice and that the court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. This Court further held that 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. The court, while examining an application under Section 319 Cr.P.C., has also to bear H in mind that there is no compelling duty on the court to proceed against

other persons. In nut shell, it means that for exercise of discretion under Section 318 Cr.P.C., all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused. A

Applying the test as aforesaid to the facts of the present case, in our view, the trial Magistrate is right in rejecting the application. The incident was of the year 1993. 17 witnesses had been examined. The statements of the accused under Section 313 Cr. P.C. had been recorded. The role attributed to the appellant, as per the impugned judgment of the High Court, was of instigation. Having regard to these facts complied with the quashing of proceedings in the year 1995 against the appellant, it could not be held that the discretion was illegally exercised by the trial Magistrate so as to call for interference in exercise of revisional jurisdiction by the High Court. B C

For the aforesaid reasons, we allow the appeal, set aside the impugned judgment of the High Court and restore this order of the trial Magistrate. D

R.P.

Appeal Allowed.