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GIRISH SHARMA & ORS.

v.

THE STATE OF CHHATTISGARH & ORS.

B

(Criminal Appeal Nos. 939-940 of 2017)

AUGUST 23, 2017

[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.]

C *Code of Criminal Procedure, 1973 – ss.161, 164, 306 – Allegation of corruption – Charge sheet against persons including senior officers of State undertaking – During investigation, statements of appellants were recorded under s.161 and 164 – Appellants were not arrayed as accused but were cited as witness in the charge sheet – After court took cognizance against the accused named in the chargesheet, some of the accused made applications*
D *u/ss.193/319 to summon these three persons as accused – Trial court rejected the application, however, High Court summoned appellants as accused – High Court found the version of the appellants in their statements u/ss.161 and 164 self incriminating – Held: In the instant case, decision of the High Court was not arrived at by*
E *weighing the interest of justice in having the appellants as accused instead of their utility as witnesses – The decision was based on the sole consideration of material against them – It was erroneously assumed that without following the procedure of s.306, an accomplice could not be cited as a witness – Further question,*
F *whether rejecting the proposal of prosecution to cite the appellants as witnesses would jeopardise prosecution case against more serious accused was not gone into – Thus matter needs fresh consideration on this touchstone – Matter remanded to High Court for fresh consideration – While considering whether these three persons be*
G *summoned as accused or not, the High Court shall not take into account the statements made by them either under s.161 or s.164 as proposed witnesses.*

Chandran @ Manichan @ Maniyan v. State of Kerala
(2011) 5 SCC 161 : [2011] 8 SCR 273 – referred to.

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Case Law Reference

[2011] 8 SCR 273 referred to Para 4

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
Nos.939-940 of 2017.

From the Judgment and Order dated 03.03.2017 of the High Court
in Criminal Revision Petition in Revision Petition No. 403 of 2016 and
484 of 2016

WITH

Crl. A. No. 941-942 of 2017.

SLP(Crl.) No. 5363 of 2017.

T. P. (Crl.) No. 241 of 2017.

Tushar Mehta, ASG, C.D. Singh, AAG, Mahesh Jethmalani,
Sidharth Luthra, Sanjay Hegde, K.V. Vishwanathan, Ramesh P. Bhatt,
Sr. Advs. Pallav Mongia, Ravi Sharma, Abhinav Goyal, Ardhendumauli
Kumar Prasad, Panshul Chandra, Ms. Taruna Ardhendumauli Prasad,
Namit Saxena, Nirmal Kumar Ambashtha, Abhay Kumar, Amit Kr. Singh,
Saurabh Mishra, Pukhrabam Ramesh Kumar, Uday Manaktala,
Peeyush Bhatia, Ms. Pooja Dhar, Dhananjay Ray, Kailash Pandey,
Ranjeet Singh, Gaichangpou Gangmei, Ms. Sakshi Kakkar, Gaurav
Shukla, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha, Avi Singh,
Pahlad Singh Sharma, Ms. Pallavi Sharma, Advs. for the appearing
parties.

The following Order of the Court was delivered

ORDER

Crl.Appeal No(s).939-940 of 2017

1. On 12th February, 2015, FIR No.9/2015 was registered by the
Anti-Corruption Bureau and Economic Offences Wing under the
provisions of Indian Penal Code and Prevention of Corruption Act, 1988.
The allegation was that huge amount was recovered from possession of
accused which was as a result of corruption. The FIR was against 27
persons but after investigation chargesheet was filed against 16 persons.
The persons against whom the chargesheet was filed included senior
officers of the Chhattisgarh State Civil Supplies Corporation.

A 2. During investigation, statements of three of the accused
mentioned in the FIR, namely, Girish Sharma, Arvind Singh Dhruv and
Jeet Ram Yadav, who are appellants before us, were recorded under
Sections 161 and 164 Cr.P.C. They were not arrayed as accused but
were cited as witnesses in the chargesheet. After the court took
B cognizance against the accused named in the chargesheet, some of the
accused made applications under Section 193/319 Cr.P.C. to summon
the above three persons, Girish Sharma, Arvind Singh Dhruv and Jeet
Ram Yadav as accused.

C 3. The trial court rejected the said applications but the matter was
carried in revision before the High Court and the High Court allowed the
summoning. The reason given by the High Court in the order of
summoning is that procedure under Section 306 Cr.P.C. was not followed
which was the only procedure available under the Criminal Procedure
Code to make an accused a witness, after grant of pardon with Court's
D permission. The High Court relied upon the version given by the said
appellants in their statements under Sections 161 and 164 Cr.P.C. annexed
to the chargesheet stating that some amount was found in their possession.

E 4. In these appeals we have heard Mr. Tushar Mehta, learned
Additional Solicitor General appearing for Anti-Corruption Bureau and
Mr. Mahesh Jethmalani, learned senior counsel appearing for appellants,
Girish Sharma, Arvind Singh Dhruv and Jeet Ram Yadav, who submitted
that Section 319 Cr.P.C. was not applicable in the present case. They
submitted that the trial court having declined to take cognizance against
the appellants, there was no justification for the High Court to have
taken cognizance against the said three persons. It was submitted that
it was the wisdom of the investigator/prosecutor to avail of the evidence
F of some of the suspects having regard to the larger purpose of securing
conviction of accused against whom there were more serious charges
and for this purpose recourse to Section 306 Cr.P.C. was not the only
option available. It was also submitted that having regard to the facts of
the present case, there was a bona fide decision taken by the prosecution
G in filing chargesheet only against 16 accused and not against the said
three appellants who were proposed to be cited as witnesses as per the
chargesheet. Self incriminating statements of the said appellants could
not be acted upon against them as the said statements were made as
proposed witnesses. It was further submitted that the said three appellants
could be separately and subsequently prosecuted in the absence of any

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immunity granted to them in terms of Section 306 Cr.P.C. In these A
circumstances, cognizance could not be taken against them merely on
account of their being incriminating material without weighing the
advantage of having them as witnesses to prove charges against the
accused named in the charge sheet which were more serious. Application
on behalf of the said accused was intended to scuttle the prosecution B
case against them which has not been appreciated by the High Court. It
was submitted that procedure under Section 306 to seek pardon is not
the only course available to rely on the evidence of an accomplice by
citing him as witness instead of arraying him as accused. Reliance has
been placed on *Chandran @ Manichan @ Maniyan versus State of*
*Kerala*¹ . C

5. Mr. K.V. Vishwanathan, learned senior counsel appearing for
respondent no.3, Kaushal Kishore Yadu, one of the original applicants
at whose instance summoning was allowed, fairly submitted that Section
319 Cr.P.C. may not be applicable at this stage. He, however, submitted D
that the decision of the prosecutor not to array a person, against whom
incriminating material existed, as accused in the chargesheet and to cite
him as a witness, could not be a final decision and is subject to ultimate
decision of the court. Cognizance could be taken by the Court.

6. The submission made on behalf of the appellants that the
prosecution was entitled to cite the three original accused as witnesses, E
in the given fact situation, having regard to larger interest of justice to
strengthen the prosecution case against more serious accused cannot
be held to be without substance. This could be done even without recourse
to Section 306 Cr.P.C. It is certainly open to the Court to finally decide
whether cognizance ought to be taken or not after balancing all the
relevant considerations. The decision of the prosecutor to cite them as F
witnesses does not bind the Court and such decision can be interfered
with if interest of justice so requires.

7. In the present case, decision of the High Court has not been
arrived at by weighing the interest of justice in having the appellants as
accused instead of their utility as witnesses. The decision is based on G
the sole consideration of there being material against them. It was
erroneously assumed that without following the procedure of Section
306 Cr.P.C., an accomplice could not be cited as a witness. Further

¹(2011) 5 SCC 161

A question, whether rejecting the proposal of prosecution to cite the appellants as witnesses will jeopardise prosecution case against more serious accused, has not been gone into. Thus, the matter needs fresh consideration on this touchstone.

B 8. Accordingly we set aside the impugned order and remand the matter to the High Court for dealing with the matter afresh in accordance with law. While considering whether the aforesaid three persons be summoned as accused or not, the High Court shall not take into account the statements made by them either under Sections 161 or 164 Cr.P.C. as proposed witnesses.

C 9. It has been brought to our notice that the charge has already been framed and four witnesses have been examined. The High Court will take this factor also into consideration whether at this stage the order declining taking cognizance by the trial ought to be interfered with by the High Court.

D 10. The parties are directed to appear before the High Court for further proceedings on Monday, the 4th September, 2017.

E 11. The High Court may deal with the matter expeditiously and as far as possible within two weeks so that the trial can proceed, having regard to the fact that the case is at the evidence stage and all the 16 accused against whom chargesheet was filed, are in custody since more than two years. Subject to the decision of the High Court, the trial may be concluded expeditiously.

The papers may be placed before the Chief Justice of the High Court of Chhattisgarh for assigning the matter to an appropriate Bench.

Criminal Appeal No(s).941-942 of 2017 :

F In view of order passed in Criminal Appeal No(s).939-940 of 2017, these appeals are also disposed of in the same terms.

SLP(Crl.)No.5563 of 2017 :

The special leave petition is dismissed as withdrawn.

T.P.(Crl.)No.241 of 2017 :

G We do not find any merit in this transfer petition which is hereby dismissed.