

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.2654 of 2015

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ORDER:

The present Criminal Revision Case is filed by the de facto complainant under Sections 397 and 401 Cr.P.C. challenging the order dated 30.06.2014 passed in CrI.M.P.No.174 of 2014 in C.C.No.443 of 2011 on the file of the XVI Special Magistrate, Hyderabad at Erramanzil, wherein an application filed by the prosecution under Section 319 Cr.P.C. adding one E.Laxmi Reddy as an accused was dismissed.

The facts in issue are as under:

On the basis of a report given by the petitioner a case in Crime No.137 of 2010 of Osmania University Police Station came to be registered against seven persons for the offences punishable under Sections 341, 448 and 506 read with 34 IPC. The gist of the prosecution case is that on 25.04.2010 at about 7.20 a.m. accused Nos.1 to 7 gathered in front of the house of the petitioner and gave slogans as "K.Anji Reddy down down etc.," and on hearing their voices, the wife and son of the petitioner came outside the house and told with them that the petitioner is not available in the house. But they did not listen to their words and forcibly entered into the compound by pushing the son of the petitioner causing obstruction to the inmates of the house. They also threatened them with dire consequences. Police investigated in to the matter and filed a charge sheet, which was taken on file as C.C.No.443 of 2011 on the file of the XVI Special Magistrate, Hyderabad at Erramanzil.

During the course of trial, the prosecution examined the petitioner as PW.1. In his evidence he deposed that the entire act of attacking his house was as per the directions of E.Laxmi Reddy, the proposed accused. PW.2, who is the son of PW.1 categorically stated that he took photographs of the accused in his mobile which show that E.Laxmi Reddy, who was standing outside escaped while taking photographs. It is also stated that prior to the date of offence, PW.1 received a phone from the mobiles of E.Laxmi Reddy and other accused. After the chief evidence of PWs.1 and 2, the prosecution filed Crl.M.P.No.74 of 2014 to add E.Laxmi Reddy as an accused, which was dismissed on 30.07.2014. Challenging the same, the de facto complainant filed the present revision.

Learned counsel for the petitioner mainly submits that the evidence of PW.2 amply establish the presence of the proposed accused at the scene of offence. Hence, the trial Court erred in rejecting the application.

Sri H.Prahlada Reddy, learned counsel appearing for the proposed accused submits that there are no merits in the revision and the same is liable to be dismissed.

Section 319 Cr.P.C. deals with the power of Court to proceed against other persons appearing to be guilty of the offence.

Section 319 Cr.P.C. reads as under:

[319.](#) Power to proceed against other persons appearing to be guilty of offence.

[\(1\)](#) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that

any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

Section 319 Cr.P.C. allows the Court to proceed against any person who is not an accused in a case before it. Therefore, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. All that is required for the exercise of power under Section 319 Cr.P.C. is that, it must appear to the Court that some other person who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the *prima facie* view which the Magistrate

must come to in order to take cognizance of the offence. In

Mohd. Shafi v. Mohd. Rafiq^[1] and ***Harbhajan Singh v. State of***

Punjab^[2] the Apex Court held as under:

“All that is required for the exercise of power under Section 319 Cr.P.C. is that, it must appear to the Court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the *prima facie* view which the Magistrate come to in order to take cognizance of the offence. Therefore, there is no straightjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 Cr.P.C. and can proceed against such other persons.

The Apex Court further held that it is essential to note that the section also uses the words “such person could be tried” instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. It has been held that infact it is this mini trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 Cr.P.C. the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same.

Thus, it has been held that even on the basis of examination-in-chief, the Court or the Magistrate can proceed against a person as long as the Court is

satisfied that the evidence appearing against such person is such that it *prima facie* necessitates bringing such person to face trial.

It has been categorically held by the Apex Court that there does not seem to be any logic behind waiting till the cross-examination of the witness is over for exercise of power under Section 319 Cr.P.C.”

Coming to the degree of satisfaction required for invoking the power under Section 319 Cr.P.C., a Constitution Bench of the Apex Court in ***Hardeep Singh v. State of Punjab and others***^[3]

held that only a *prima facie* case is to be established from the evidence led before the Court, not necessarily tested on the anvil of cross-examination. It requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than *prima facie* case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. The Apex Court further held that what is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if un-rebutted, may lead to conviction of the persons sought to be added as an accused in the case.

Keeping in view the broad principles laid down by the Apex Court in the judgments referred to above, I shall now proceed to deal with the case on hand.

A perusal of the evidence of PW.2 would show that on the date of incident somebody tapped the door and his mother went and opened the door. By then about 40 to 50 persons already entered into the compound and enquired about his father (PW.1). He told them that his father went outside. They warned them to

call his father immediately otherwise they will damage the property. PW.2 asked them to wait for one hour as they are going to Church. The said mob prevented them from going to Church. He categorically stated that one Laxmi Reddy was standing outside and when PW.2 was taking photos he escaped from the place.

In the cross examination it was suggested to PW.2 that PW.1 and one Laxmi Reddy were working in Civil Supplies Department. Laxmi Reddy was known to PW.1. It is not even suggested to PW.2 that there were any disputes between PW.1 and the accused and the proposed accused has a grouse against PW.1.

In view of the judgments of the Apex Court referred to above and having regard to the nature of evidence adduced by the prosecution through PW.2, this Court is of the view that the order under challenge warrants no interference.

Accordingly, the Criminal Revision Case is dismissed.

Miscellaneous petitions, if any, pending, shall stands closed.

C.PRAVEEN KUMAR,J

01.04.2016

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[\[1\]](#) (2007) 14 SCC 544

[\[2\]](#) (2009) 13 SCC 608

[\[3\]](#) (2014) 3 SCC 92