

Mithlesh Kumari v. State of Haryana (A. L. Bahri, J.)

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in the contention of the learned counsel for the petitioner that rule 2.2 referred to above only applies for the purpose of determining pension and when any criminal case is instituted there is no question of determining such pension of a Government servant. Rule 2.2 applies to departmental as well as judicial proceedings civil or criminal which is clear from the explanation attached to the rule itself. Sub-rule 3 of rule 2.2 is a complete bar for institution of judicial proceedings in respect of a cause of action which arose on an event which took place more than four years before such institution. Admittedly in the present cases challans were presented in the Court much after four years of the commission of the alleged offences. The Court could not entertain the same.

(7) For the reasons recorded above, these Revision Petitions are dismissed while affirming the order of the Trial Court discharging the accused.

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S. C. K.

*Before A. L. Bahri, J.*

MITHLESH KUMARI,—*Petitioner.*

*versus*

STATE OF HARYANA,—*Respondent.*

*Criminal Revision No. 709 of 1988.*

September 5, 1988.

*Code of Criminal Procedure (II of 1973)—Ss. 173 and 319—Indian Penal Code (I of 1860)—S. 306—Offence under section 306 I.P.C.—Police report under section 173 Cr.P.C. against three persons—Trial not commenced—Prosecution applying for summoning more persons as accused—Such application allowed—No evidence recorded—Validity of summoning order—Order quashed.*

*Held*, that the statements recorded under section 161, Criminal Procedure Code, 1973 or the documents produced cannot be considered as evidence led during the trial to invoke the powers under section 319(1) of the Criminal Procedure Code. It is only when evidence is recorded during the trial that the provisions of section 319 Cr.P.C. would come into play and Court may summon any other person to stand trial with the persons already accused before the Court if from the evidence led it appears to the Court that such

person has committed an offence. Since in the present case the Court had not recorded any evidence resort to the provisions of section 319 Cr.P.C. could not be had simply on the application filed by the prosecution or the complainant. (Para 4).

*Petition for revision under section 397/401 Cr.P.C. for revision of the order of the Court of Shri K. C. Gupta, Additional Sessions Judge, Ambala, dated 6th April, 1988 summoning the two persons namely Mithlesh Kumari daughter of Suraj Parkash and Pala Saint through bailable warrants in the sum of Rs. 2,000 each for 5th May, 1988 and,—vide order dated 13th June, 1988 charging the accused under section 306 I.P.C.*

Hemant Kumar, Advocate, for the Petitioner.

J. B. Takoria, Advocate, for the Respondent.

#### JUDGMENT

A. L. Bahri, J.

On the night intervening 24th and 25th October, 1984, Bal Krishan committed suicide. From the body of Bal Krishan, two letters, dated October 22 and October 23, 1987 were recovered. These letters indicated that his wife Veena was being used as prostitute under the influence and pressure of her father Suraj Parkash, her mother Bhagwanti, their landlord Pala and Mithlesh, wife of Gopal Krishan, sister of Veena. The case was investigated by the police and report under section 173, Criminal Procedure Code was submitted against Suraj Parkash, Veena and Bhagwanti. After these accused were committed to the Court of Sessions, an application was filed that on the basis of those letters, Pala and Mithlesh Kumari should also be summoned to face trial along with others. The said application was allowed by the Additional Sessions Judge on April 6, 1988. *Vide* order dated June 13, 1988, the Additional Sessions Judge came to the conclusion that there were grounds for proceeding against the five accused aforesaid who were ordered to be charged under section 306, Indian Penal Code. These two orders are being challenged by Mithlesh Kumari in this revision petition.

(2) The contention of learned counsel for the petitioner is that without recording evidence, Additional Sessions Judge had no jurisdiction to order summoning of the petitioner to face trial. There

Mithlesh Kumari v. State of Haryana (A. L. Bahri, J.)

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is force in this contention. Section 319(1), Criminal Procedure Code, 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.”

(3) The aforesaid provision no doubt gives wide powers to the trial Court in the matter of summoning any person, even if not shown as an accused in the report submitted under section 173, Criminal Procedure Code, against whom during the course of an inquiry or trial, it appears from the evidence that he had committed any offence. The matter was under consideration of the Supreme Court in *Joginder Singh and another v. State of Punjab* (1). While referring to the provisions of sections 193, 209 and 319(1) of the Code of Criminal Procedure, in para 6 of the judgment it was held as under:—

“It is true that there cannot be a committal of the case without there being an accused person before the Court, but this only means that before a case in respect of an offence is committed there must be some accused suspected to be involved in the crime before the Court but once the case in respect of the offence *qua* those accused who are before the Court is committed then the cognizance of the offence can be said to have been taken properly by the Sessions Court and the bar of Section 193, would be out of the way and summoning of additional persons *who appear to be involved in the crime, from the evidence led during the trial and directing them to stand their trial along with those who had already been committed* must be regarded as incidental to such cognizance and a part of the normal process that follows it; otherwise the conferral of the power under section 319 (1) upon the Sessions Court would be rendered nugatory. “(Emphasis supplied).

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(1) AIR 1979 S.C. 339.

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The above view was reiterated by the Supreme Court in *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others*, (2). In para 19 of the judgment, it was held as under :—

“In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is 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.”

(4) In the present case, the trial as such has not proceeded. The evidence is yet to be recorded at the trial. What was before the Court was a report submitted under section 173, Criminal Procedure Code accompanied by statements of the witnesses recorded under section 161, Criminal Procedure Code, and documents, the two letters, referred to above. Such statements recorded under section 161, Criminal Procedure Code, or the documents produced cannot be considered as evidence led during the trial to invoke the powers under section 319(1) of the Code of Criminal Procedure. At this stage, it may be stated that such material may be considered for the purposes of framing charge as is clear from sections 226, 227 and 228 of the Code of Criminal Procedure. These provisions relate to trial before the Court of Sessions. While opening the prosecution case, the Public Prosecutor is to describe the charge brought against the accused and to state by what evidence he proposes to prove the guilt of the accused. It is upon consideration of the record of the case and the documents submitted therewith that if the Court finds no sufficient ground to proceed against the accused, the Court shall discharge the accused, otherwise the Court is to frame the charge. These provisions are applicable to the accused who are before the Court. It is thereafter that when evidence is recorded during the trial that provisions of section 319, Criminal Procedure Code, would come into play that the Court may summon any other person to stand trial with the

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(2) A.I.R. 1983 S.C. 67.

Piara Singh and another v. State of Haryana and others  
(G. C. Mital, J.)

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persons already accused before the Court if from the evidence led it appears to the Court that such person has committed an offence. Since in the present case the Court had not recorded any evidence, resort to the provisions of section 319 (1), Criminal Procedure Code, could not be had simply on the application filed by the Public Prosecutor or the complainant. Order dated April 6, 1988 summoning Mithlesh accused to face trial being illegal is set aside. With consequence the order framing charge against Mithlesh accused dated June 13, 1988 to that extent is also set aside, while accepting the revision petition.

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S. C. K.

*Before G. C. Mital and S. D. Bajaj, JJ.*

PIARA SINGH AND ANOTHER,—*Petitioners.*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 72 of 1988*

*September 26, 1988.*

- (a) *Constitution of India, 1950—Arts. 14, 16, 37 to 44 and 226—Industrial Disputes Act, (XIV of 1947)—Ss. 25-B, 25-F and 25-G—Ad hoc class III and IV employees serving for more than one year in different departments and Corporations of the State of Punjab—Service of such employees—Whether liable to be regularised—If service benefits to be given from the date of initial appointment—Fixation of date for qualification for regularisation—Whether discriminatory and violative of Articles 14 and 16.*
- (b) *Regularisation—Employees of State Departments and Corporations in the State of Haryana on completion of two years of service—Whether to be considered as regular employees—Persons completing more than a year of services—Services—Whether can be terminated—Government directed to frame scheme of regularisation.*
- (c) *Regularisation—Daily wage workers and casual labourers other than those falling within the meaning of ‘workman’*