

M/S. SWIL LTD.
v.
STATE OF DELHI AND ANR.

AUGUST 14, 2001

[M.B. SHAH AND S.N. PHUKAN, JJ.]

Code of Criminal Procedure, 1973 :

Section 190—Offence—Cognizance of—By Magistrate—Scope and ambit of—Summons issued against a person not mentioned or named as accused in charge-sheet—Correctness of—Held : Under S.190 Magistrate takes cognizance of an offence and not the offender—At the stage of issuing process it is for the Magistrate to decide whether or not to issue process against persons named or not named in the charge-sheet—Hence, summons rightly issued.

Section 319—Persons not named as accused—Power to proceed against—Scope and ambit of—Held: At the stage of issuance of process S.319 has no application—That provision comes into operation in the course of inquiry into or trial of an offence.

The appellant-complainant filed an FIR against respondent-No. 2 for cheating, misappropriating and causing wrongful loss to the appellant. But respondent No. 2 was shown in column No. 2 of the charge-sheet, which was meant for the accused who were not sent for the trial.

On the basis of the aforesaid charge-sheet, the Metropolitan Magistrate issued summons against all the accused including respondent No. 2. However, the High Court quashed the summons on the ground that respondent No. 2 could be summoned by the court under Section 319 of the Code of Criminal Procedure, 1973 only after the evidence had been received. Hence this appeal.

On behalf of the appellant it was contended that the High Court ignored the provisions of Section 190 Cr.P.C. and that there was no question of referring to Section 319 Cr.P.C. at the stage of issuance of summons.

Allowing the appeal, the Court

HELD : 1. At the stage of taking cognizance of the offence, provisions

- A** of Section 190 of the Code of Criminal Procedure, 1973 would be applicable. As per this provision, a Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate under Section 204 Cr.P.C. is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge-sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the police officer and other documents tendered along with the charge-sheet. Further, upon receipt of police report under Section 173(2) Cr.P.C., the Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating officer and independently applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the police. At this stage, there is no question of application of Section 319 Cr.P.C. [530-C, D, E, F]
- D** *Raghubans Dubey v. State of Bihar*, [1967] 2 SCR 423, relied on.

2. In the instant case there is no question of referring to the provisions of Section 319 Cr. P.C. That provision would come into operation in the course of any inquiry into or trial of an offence. In the present case, neither the Magistrate was holding inquiry as contemplated under Section 2(g) Cr. P.C. nor the trial had started. He was exercising his jurisdiction under Section 190 taking cognizance of an offence and issuing process. There is no bar under Section 190 Cr. P.C. - that once the process is issued against some accused, on the next date, the Magistrate cannot issue process to some other person against whom there is some material on record, but his name is not included as accused in the charge-sheet. [530-H, 531-A, B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 820 of 2001.

- G** From the Judgment and Order dated 3.7.2000 of the Delhi High Court in Crl. Misc. (Main) No. 1818 of 2000.

WITH

SLP (Crl.) Nos. 1564-1565/2001 and Transferred case (Crl.) No. 1/2001.

- H** Dr. A.M. Singhvi, Surya Kant, P.K. Bansal, B. Sunita Rao, Ms. Malini Poduval, Ms. Lansinglu Rongmei for the Appellant.

R.K. Jain, Y.N. Bhardwaj, Ms. Manu Beri, Yash Pal Dhingra, B.A. Mohanti, A
Ms. Neera Gupta, Avatar Singh Rawat and D.S. Mehra for the Respondents.

The Judgment of the Court was delivered by

SHAH, J. Leave granted in S.L.P. (Ctrl.) No. 620 of 2001. B

The High Court of Delhi in Criminal Misc. (Main) No.1818 of 2000 vide
judgment and order dated 03.7.2000 arrived at the conclusion that “the Court
was totally unjustified in summoning the petitioner when the petitioner was
not shown in the column of accused persons in the charge sheet”. Relying
on Section 319 Cr.P.C., the High Court held that such persons could be C
summoned by the Court under Section 319 only after the evidence has been
recorded. That order is challenged in this appeal.

Learned senior counsel, Dr. Singhvi, appearing for the appellant
submitted that the impugned order passed by the High Court ignored the
provisions of Section 190 Cr.P.C. and there was no question of referring to D
Section 319 Cr.P.C. at the stage. As against this, learned senior counsel, Mr.
R.K. Jain, appearing for respondent no.2 supported the impugned order and
submitted that in the charge-sheet respondent no.2 was not shown as accused
and his name appeared only in column no.2 and, therefore, without there
being any additional evidence on record, Magistrate was not justified in E
issuing summons. He, therefore, contended that the High Court rightly referred
to Section 319 and held that without there being any additional evidence
respondent no.2 could not be summoned as accused.

Brief facts are-it is the say of the complainant-appellant that it is a
public limited company dealing in import and export business and is having F
its registered office at Calcutta and branch office at New Delhi. Petitioner
lodged FIR No.616/97 on 28.8.1997 at police station Kalkaji, New Delhi, against
M/s. Malabar Cashewnuts and Allied Products, having its office at Quilon
(Kerala) and its partners. During investigation, it was revealed that respondent
no.2 J. Rajmohan Pillai was the Managing Director of another sister company G
known as M/s Pace International Company and two letter of credits given by
the complainant-appellant were transferred by one of the accused A. Suresh
Kumar to the Pace International Company. On this discovery, notice under
Section 160 Cr.P.C. was issued to J. Rajmohan Pillai by the police. Because
of the stay order issued by the High Court of Kerala it was not possible for
the police to interrogate respondent no.2 and to ascertain whether he was H

A involved in the conspiracy. He was, therefore, not joined as accused in the charge-sheet submitted by the police, but his name was shown in column no.2, which is meant for the accused who are not sent for the trial. It was also stated that accused had cheated, misappropriated and caused wrongful loss to the complainant company to the tune of Rs.2,10,60,000.

B On the basis of the said charge sheet, the Metropolitan Magistrate on 3rd August, 1999 issued summons against all accused shown in the FIR for the offence under Sections 420/406/120-B IPC. On the next date of posting (20.12.1999), he also issued the summons to respondent no.2. That part of the order was challenged by him by filing the aforesaid petition before the High Court of Delhi.

C In our view, from the facts stated above it is clear that at the stage of taking cognizance of the offence, provisions of Section 190 Cr.P.C. would be applicable. Section 190 inter alia provides that 'the Magistrate may take cognizance of any offence upon a police report of such facts which constitute an offence.' As per this provision, Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate under Section 204 Cr.P.C. is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the police officer and other documents tendered along with charge sheet. Further, upon receipt of police report under Section 173 (2) Cr.P.C., the Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating officer and independently applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the police. At this stage, there is no question of application of Section 319 Cr.P.C. Similar contention was negatived by this Court in *Raghubans Dubey v. State of Bihar*, [1967] 2 SCR 423 by holding thus:

G "In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are

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involved, it is his duty to proceed against those persons. The A
summoning of the additional accused is part of the proceeding initiated
by his taking cognizance of an offence.”

Further, in the present case there is no question of referring to the B
provisions of section 319 Cr.P.C. That provision would come into operation
in the course of any inquiry into or trial of an offence. In the present case,
neither the Magistrate was holding inquiry as contemplated under section
2(g) Cr.P.C. nor the trial had started. He was exercising his jurisdiction under
section 190 of taking cognizance of an offence and issuing process. There is
no bar under section 190 Cr.P.C. that once the process is issued against some
accused, on the next date, the Magistrate cannot issue process to some other C
person against whom there is some material on record, but his name is not
included as accused in the charge-sheet.

In the result, the appeal is allowed, the impugned order passed by the
High Court is set aside.

In view of the aforesaid order, SLP (Crl.) Nos. 1564-1565 of 2001 filed D
by A. Sasikanth seeking quashing of the impugned order passed by the High
Court of Delhi in Criminal Misc. (Main) No. 1818 of 2000 and T.C. (Crl.) No.1
of 2001, originally filed by J. Rajmohan Pillai before the High Court of Kerala
would not survive at this stage and stand disposed of accordingly.

The trial court to proceed with the matter in accordance with law. E

V.S.S.

Appeal allowed.