

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE/ORIGINAL JURISDICTION

CRIMINAL APPEAL NO(S). 939-940 of 2017

GIRISH SHARMA & ORS.

...Appellant(s)

VERSUS

THE STATE OF CHHATTISGARH & ORS.

...Respondent(s)

WITH

Criminal Appeal No(s). 941-942/2017

SLP(Crl) No. 5363/2017

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

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.

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 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.

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 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.

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 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 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 immunity granted to them in terms of Section 306 Cr.P.C. In these 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 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 .

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 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, 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 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 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 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.

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.

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.

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

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 :

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 :

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

.....J.
(ADARSH KUMAR GOEL)

.....J.
(UDAY UMESH LALIT)

New Delhi,
August 23, 2017.