NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1277 OF 2010

Deepu @ Deepak ... Appellant

Versus

State of Madhya Pradesh ... Respondent

J U D G M E N T

Mohan M. Shantanagoudar, J.

1. The judgment dated 01.12.2008 passed by the High Court of Madhya Pradesh at Jabalpur: Bench Gwalior in Criminal Revision No. 314 of 2007 confirming the order dated 12.03.2007 passed by the XIth Additional Sessions Judge, Gwalior, framing charges against the appellant for the offences punishable under

Sections 394 and 460 of the Indian Penal Code (for short 'the IPC'), and alternatively under Sections 302 and 397, IPC along with Sections 25 (1B) (a) and 27 of the Arms Act in S.T. No. 156/99, is called in question in this appeal.

2. The First Information Report came to be lodged against three persons alleging the offence of murder and robbery. A charge-sheet was filed against seven persons, including the accused. The Trial Court had discharged the appellant herein initially, along with four other accused, however, the said order of discharge of the appellant was recalled subsequently. The order of recalling was confirmed by the High Court. The said order of recalling came to be set aside by this Court on the ground that there is no provision to review or recall the order under the Code of Criminal Procedure (for short 'the Cr.P.C.') by the Criminal Court/Sessions Court. The earlier orders, as mentioned supra, including the order passed by this Court, reveal that the initial order of discharge passed by the Trial Court was without reference to the supplementary charge-sheet/additional charge-sheet filed against the appellant, which contained ample material against the appellant to frame charges. The supplementary charge-sheet also included material relating to the recovery of a

pistol used for the commission of the offence by the appellant, at the instance of the appellant.

3. During the trial of the other two accused (since the appellant was discharged at an earlier point of time), an application came to be filed on behalf of the prosecution under Section 319 of the Cr.P.C. with regard to the appellant based on the material on record. The Trial Court, being satisfied about the existence of ample material against the appellant to proceed against him on the basis of the supplementary charge-sheet, Test Identification Parade, Forensic Science Laboratory report and statements of witnesses recorded under Section 161 of the Cr.P.C., as well as depositions of witnesses, issued summons to the appellant herein and thereafter proceeded to frame charges against him. As mentioned supra, the said order came to be confirmed by the High Court.

4. We do not find any reason to interfere with the impugned orders, inasmuch as the Trial Court by duly applying its judicial mind to the facts of the case rightly concluded that it is a fit case to proceed against the appellant in the sessions case. Since, at an earlier point of time the supplementary charge-sheet was ignored by the Trial Court while discharging the appellant, there

is no bar to proceed against him under Section 319 Cr.P.C. based on the supplementary charge-sheet, that too when sufficient material is brought on record against him during the course of trial. The supplementary charge-sheet shows that the identification parade was held, wherein the appellant was identified by the witnesses as one of the accused who participated in the incident of murder. The combined effect of the FSL reports as well as the statements of witnesses recorded under Section 161 of the Cr.P.C. as found in the supplementary charge-sheet and depositions of PW5 (Sreshtha), PW6 (Mukul Gupta), PW7 (Shyam Bihari), PW8 (Rajaram) and PW12 (N. K. Upadhyaya) fully justifies the orders of the Trial Court and the High Court under Section 319 of the Cr.P.C. The Courts on facts have correctly found that the material is sufficient, prima facie, to proceed against the appellant for the offence which he appears to have committed, and we concur with their decision.

5. It is relevant to note the following observations of the judgment rendered by a Constitution Bench of this Court in the case of *Hardeep Singh vs. State of Punjab,* (2014) 3 SCC 92, which read thus:

> "…….. The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 Cr.P.C. without resorting to the provision of Section 319 Cr.P.C. directly."

In the matter on hand, the Sessions Court, as aforementioned, has found that the earlier order of discharge was without reference to the supplementary charge-sheet, though the supplementary charge-sheet was in existence then. Only after applying its mind judiciously to the facts of the case and on verifying the details of the supplementary charge-sheet as well as other material on record, mentioned supra, the Trial Court concluded that it is a fit case to proceed against the accused/appellant under Section 319 of the Code of Criminal Procedure. The said order is confirmed by the High Court. The procedure as contemplated under Section 319 Cr.P.C. as well as

the procedure as laid down by this Court in *Hardeep Singh (supra)* is fully satisfied by the Trial Court.

6. For the reasons aforementioned, we find no reason to interfere with the impugned orders. The appeal fails and is accordingly dismissed. However, we make it clear that any observation made by the Trial Court, the High Court as well as this Court during the course of this order will not come in the way of the Trial Court to decide the sessions case on merits and in accordance with law.

.....J.
[N.V. RAMANA]

.....J.
[MOHAN M. SHANTANAGOUDAR]

New Delhi;
December 14, 2018.