CASE COMMENT ON MOHIT @SONU AND ANOTHER VS. STATE OF U.P. AND ANOTHER

Mrinal Kaushik*

INTRODUCTION

On 7.02.2003 at 10.30 p.m., seven persons were suspected of guilt in the case of Mohit vs. State of U.P. and Anr.,[1] he was equipped with a lathi, danda, and hockey stick, which were used to inflict injury to the complainant and his uncle. The complainant lodged an FIR regarding this incident against all seven accused. When the medical examination was conducted on the very next day of the incident, it was found by the doctor that there was a lacerated wound on the left side of the skull of the complainant. His uncle succumbed to his injuries and alleged that the injuries had been caused by the accused. In the FIR, all seven accused have been charged under sections 147, 323, 504, and 304 of the Indian Penal Code.[2] (*hereinafter referred to as IPC*). The investigation officer examined the complainant and the witnesses, but while submitting the chargesheet, the investigation officer submitted only the names of five accused rather than all seven of them. The complainant was examined as PW-1 in this case by the Trial Court, and the chief was appointed as the examination officer of the complainant. He mentioned the role of all the accused at the time of the incident. There were two issues raised in this case:

- Is it maintainable to submit a complaint under Section 482[3] Criminal Procedure Code[4] before the HC to overturn the Session Court's ruling made under section 319[5] Criminal Procedure Code?
- Whether the HC should have given the appellants notice and a chance to be heard before adopting the contested ruling.

*BBA LLB, SYMBIOSIS LAW SCHOOL, NAGPUR.
[1] Mohit @ Sonu & Anr vs State of U.P.& Anr. (2013) 7 SCC 789
[2] THE INDIAN PENAL CODE, 1860 ACT NO. 45 OF 1860
[3] THE CODE OF CRIMINAL PROCEDURE, (1973), s. 482
[4] THE CODE OF CRIMINAL PROCEDURE, (1973)
[5] THE CODE OF CRIMINAL PROCEDURE, (1973), s. 319

BACKGROUND

On 25th July 2008, the Trial Court discarded the application of the complainant under section 319 of the Criminal Procedure Code (*hereinafter referred to as CrPC*) to call the appellants for the reason that cross-examination of PW-1 was incomplete, and even after examining all witnesses, the facts of the case were not clear enough to convict the appellants. In the first application, a Criminal Miscellaneous Application was filed before the HC of Allahabad challenging the decision of the Trial Court under Section 482 of the CrPC. On 3rd September 2008, this court gave the judgment stating that there was no error found in the judgment of the Trial Court. Since the Trial Court had not finalised its decision on questioning the summons of the appellants, it simply postponed the matter till the time all the cross-examination of the witnesses is completed. On August 3, 2009, the Trial Court also resolved the second application to call the appellants in the Trial Court. After reviewing several court rulings and debating PW-1, PW-2, and PW-3's comments, the Trial Court concluded that the evidence in the record is inaccurate and inconsistent. In the second application, a complaint was filed by the complainant regarding Criminal Miscellaneous under the provision 482 of the CrPC in the HC, on 28th October 2009. The impugned order passed by the HC held that the Trial Court had committed an error by not summoning the appellants, who can serve as the prima facie evidence in the instant case.

ANALYSIS

The decision is important in this case because it offers much clarity to the minimum scope of interlocutory orders under Section 397(2)[6] of the CrPC, and the inherent authority of the High Court under Section 482. On the positive side, the Court rightly held that the refusal to summon additional accused under Section 319 CrPC cannot be treated as a mere interlocutory order, since such a refusal directly affects the rights of the complainant and the liability of the accused. The Court adopted this reasoning to safeguard the defeat of substantive rights by the mere fact that an order is characterised as interlocutory. This approach aligns with earlier precedents such as *Amar Nath v. State of Haryana*.[7] and *Madhu Limaye v. State of Maharashtra*,[8] which emphasised that interlocutory orders should be understood in a restricted sense.

[6] THE CODE OF CRIMINAL PROCEDURE, (1973), s. 397 (2)
[7] Amar Nath v. State of Haryana (1977) 4 SCC 137
[8] Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551

Equally commendable is the Court's reaffirmation that the inherent powers of the High Court under Section 482 remain untouched by the limitations of Section 397.[9] By drawing on *Raj Kapoor v. State,*[10] the Court emphasised that the High Court has the right to step in where the need arises and ensure the ends of justice or to prevent abuse of process. This makes a necessary compromise whereby the procedural bars do not choke out justice entirely.

However, while the Court's reasoning is doctrinally sound, the judgment leaves some areas open to critique. To begin with, the Court might have done more to engage with the evidentiary threshold that needed to be met at that point because the Court treated the refusal of the trial court to summon under Section 319. Even though the Court emphasised that the refusals of this kind affect rights and are therefore not interlocutory, it failed to explicitly identify the criterion of when the presence of additional accused ought to be called. This uncertainty may baffle the trial courts as to how Section 319 is to be applied consistently.

Second, the Court's reliance on the principle of *audi alteram partem* was correct in setting aside the impugned order, but it raises the question of whether every failure to hear the accused or complainant at an interim stage should automatically vitiate the proceedings. Although natural justice is essential, it also has a threat of developing procedural inflexibility, which could unnecessarily slow down the trials. Those more subtle words would have been a compromise between effectiveness and equality.

Finally, the Court was right when highlighting that the existence of Section 397 does not preclude the application of Section 482, but it failed to warn against excessive application of inherent powers. Leaving too much room for Section 482 petitions risks opening the floodgates for litigants to bypass statutory remedies and overburden High Courts. Better instructions on how Section 482 can be validly invoked would have strengthened the ruling.

The Supreme Court is commendable in its tightening of the definition of interlocutory order and its ability to maintain the supervisory powers of the High Court in Section 482. Simultaneously, its rationale might have been further elaborated based on evidentiary standards under Section 319 and struck a balance between natural justice and the efficiency of the procedure. The ruling is thus a stride toward protecting justice, but also a warning that prosecutors have to be more accurate when judging procedural protections.

[9] THE CODE OF CRIMINAL PROCEDURE, (1973), s. 397
[10] Raj Kapoor v. State (1980) AIR 258

CONCLUSION

The Supreme Court ruling in this case played a major role in elucidating the use of Sections 397(2) and 482 CrPC, especially in cases concerning the summoning of accused persons as stipulated in Section 319 CrPC. The case strengthened the argument between interlocutory and final orders to create a precedent that orders which decide the rights and liabilities of parties cannot be described as interlocutory. This difference is very important since it provides avenues where parties can challenge such orders in superior courts that would be inadmissible under Section 397(2) CrPC. The significance of the judgment was in its attribution of the extent of inherent powers of the HC under Section 482 CrPC. In affirming that these powers are intended to achieve justice and to guard against the misuse of the process of law, the SC made it clear that such inherent powers could be resorted to in extraordinary situations where no other remedy is even expressly available. This not only strengthened the authority of the HC but also guarded the interests of complainants and victims who would have no remedy in case of erroneous or unjust decisions by lower courts.

Nonetheless, the case also brought to light some of the gaps in the procedure structure of the CrPC, particularly in connection with the discretionary authority vested in the Trial Courts in Section 319 CrPC. Although the court can use Section 319 to have individuals not initially mentioned in the charge sheet summoned in accordance with the evidence that comes out during trials, it is not clear what evidence is required to summon them. The decision again reiterated the fact that sufficient prima facie evidence is needed to call more accused people to book, but the unspecified requirement of sufficiency of evidence creates room to apply the same inconsistently across judicial levels. The other possible gap is in the application of the principles of natural justice, especially the doctrine of Audi Alteram Partem (right to be heard). In this instance, the SC was correct when it argued that the Trial Court had failed to summon the accused without allowing the accused to be heard, which violated natural justice. Nevertheless, the CrPC does not provide any guidelines to make sure that courts adhere to this principle at all times, especially in the interlocutory proceedings.