

News

Can sessions court summon accused at outset of trial when not charge-sheeted by police? Supreme Court responds



The verdict came in a case where one Kallu Nat alias Mayank Kumar Nagar was summoned to face trial in a rape and murder case, even though the police had listed him as an accused in the chargesheet.

Highest Judgement Level

The Supreme Court on Tuesday decided that a sessions court can summon an accused at the commencement of trial under Section 193 of the Code of Criminal Procedure (CrPC) even if the accused has not been charge-sheeted by the police but his participation in the crime apparent in the evidence available on record [Kallu Nat against State of UP]

The Bench of Justices JB Pardiwala and R Mahadevan rejected the notion that such a person might be summoned to face trial only when his involvement appears from the oral evidence of any of the witnesses, in exercise of the powers under Section 319 of the CrPC.

"To hold in such a situation, that if the investigating agency blatantly exonerates an accused person and the Magistrate does not consequently commit him, the Court of Session itself would be rendered powerless to put such an offender in the dock at the very opening stage of the trial, would to our mind only hamper the cause of justice rather than advance it," the Court said.

R. Mahadevan and Justice J.B. Pardiwala

The verdict came in a case where one Kallu Nat aka Mayank Kumar Nagar was summoned to face trial in a rape and murder case even though the police had not listed him as an accused in the chargesheet.

Soon after the case was committed to the Sessions court by a magistrate, the complainant filed an application under Section 193 of the CrPC seeking to summon Kallu as an accused. The trial judge granted the plea.

The Allahabad High Court maintained the verdict, compelling Kallu (petitioner) to approach the Supreme court.

The Court dealt with the argument that cognizance of an offence can be taken only once and if the Magistrate has taken cognizance of an offence and committed it to the sessions court, then there is no question of taking fresh cognizance of the offence by sessions court upon the case being committed to it.

It explained that the Magistrate takes cognizance of the offence and not the offender and only for the restricted purpose of committing the matter to the court of sessions, having respect to the nature of the offences.

"Once the case in respect of the offence qua the accused, who are before the Court, is committed and cognizance is taken, the embargo under Section 193 regarding taking cognizance solely by committal goes. Summoning additional persons will thus be treated as incidental to the cognizance already taken on committal and as, a part, of, the normal process that follows. A further committal of such person is not necessary," the Court added.

Accordingly, the Court confirmed the decision of the sessions court and denied the plea. The registry was asked to circulate a copy of the ruling to all the High Courts.

Advocates Vikas Upadhyay, Ankita Kashyap, Shiva Narang and Ranveer Singh appeared for the petitioner.

Lawread