
(1999) 02 PAT CK 0076

In the Patna High Court

Case No : Criminal Miscellaneous No. 28488 of 1998

Jagdish Prasad Mishra and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (1999) 2 BLJR 1374

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this application, the petitioners have prayed for quashing the entire criminal proceedings including the order dated 21.11.1998 passed by the Third Additional Sessions Judge, Purnea, in Session Trial No. 377 of 1997 by which he directed for issuance of processes against the petitioners u/s 319 of the Code of Criminal Procedure (For short "the Code") in connection with Kasba P.S. Case No. 147 of 1996.

2. The prosecution story, in short, is that on 22.6.1996 at 10 a.m. Jhagru Biswas came at the residence of the informant and asked Basho Rishi to come in Gad Beheli Bazar and on hearing this Basho Rishi left this residence and when on the same night, he did not return then the informant stayed there. Thereafter, on the next day evening, he asked Jhagru Biswas whereabouts of his brother and Jhagru Biswas informed him that they stated in the house of Janardan Biswas. On enquiry from Janardan Biswas, Janardan Biswas informed him that Jhagru Biswas and Basho Rishi came to their residence and after taking meal, they left away. In village Panchaiti Jhagru Biswas admitted that he and Basho Biswas went to Bazar. On 20.6.1996 near Samariya Mauji Nahar, the dead-body of Basho Rishi was found. He was killed by sharp weapon on pressing of neck. The police after investigation submitted charge-sheet only against Jhagru Biswas and Bidyanand

Biswas and the police has not sent up the petitioner. The Court below accordingly took cognizance against Jhagru Biswas and Bidyanand Biswas u/s 302/201/34 of the Indian Penal Code and charge has been framed against them.

3. It appears that after commitment of the case, four witnesses were examined on behalf of the prosecution. The prosecution thereafter filed a petition before the learned Sessions Judge on 20.8.1998 u/s 319 of the Code to issue summonses against the petitioners. That application was heard and the learned Sessions Court after considering the evidence of four witnesses found that the evidence suggests involvement of the petitioners in the commission of the crime. Accordingly, the learned Sessions Judge passed the impugned order for issuance of processes against the petitioners.

4. Mr. Tara kant Jha, learned Senior Advocate appearing for the petitioners assailed the impugned order as being illegal and wholly without jurisdiction. Learned Counsel submitted that admittedly, the petitioners were made accused but charge-sheet was not submitted against the petitioners and, therefore, the processes cannot be issued against them u/s 319 of the Code. According to the learned Counsel, condition precedent for applying the provisions of Section 319 of the Code is that the person summoned must not be an accused in the case. In this connection, learned Senior Advocate put heavy reliance on the decision of the Supreme Court in the case of Sohan Lal and others Vs. State of Rajasthan, . The submission of the learned Counsel has no force and is devoid of any substance. For better appreciation of the case, Section 319 reads as under:

319. Power to proceed against other persons appearing to be guilty of offence.--

(1) Where, in the course of any inquiry into or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summon, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under Sub-section (1) then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provision of Clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

5. From bare reading of the aforesaid provisions, it is clear that where, in course of any inquiry or trial, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person and issue summons to face trial. The expression "any person not being accused" used in this provision means and includes person who are not being tried by the Court. The law has been settled by the Supreme Court in the case of *Joginder Singh and Another Vs. State of Punjab and Another*, ; *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, : *Dr. S.S. Khanna Vs. Chief Secretary, Patna and Another*, . All the above referred decisions have been considered by a Division Bench of this Court in the case of *Bishwanath Tato and Others Vs. The State of Bihar* , and it has been held that the expression "accused persons" used in Section 319 of the Code includes even a person who has been discharged earlier and if during trial evidence shows his complicity in the crime then the Court is empowered to summon persons to face trial.

6. As noticed above, in the instant case charge-sheet was submitted but the petitioners were not sent up for trial. However, after the case was committed to the Court of Sessions four witnesses were examined and from their evidence, it was found that the petitioners also participated in the commission of the crime. Accordingly, the Court passed the impugned order issuing processes against the petitioners. I do not find any illicitly or infirmity in the impugned order passed by the Court below.

7. This application has, therefore, no merit which is accordingly dismissed.