
(2004) 10 JH CK 0035
In the Jharkhand High Court
Case No : Criminal M.P. No. 922 of 2003

Jamshed Hussain and Another	Vs	APPELLANT
State of Jharkhand and Another		RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 482
Penal Code, 1860 (IPC) — Section 323, 384, 498A

Citation : (2005) 1 DMC 616 : (2005) 1 JCR 39

Hon'ble Judges : Amreshwar Sahay, J

Bench : Single Bench

Advocate : A.K. Amar, for the Appellant; Jitendra S. Singh, K.K. Mishra and A.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Amreshwar Sahay, J.—Heard the parties.

2. The two petitioners have challenged the order dated 16.4.2003 passed by the Sub-Divisional Judicial Magistrate, Jamtara, where by, in exercise of the power u/s 319 of the Cr PC these two petitioners have been summoned as accused persons to face trial.

3. The facts in short are that a complaint case being PCR No. 375/2000 was filed by the Jahida Sultan @ Baby against five persons including these two petitioners for allegedly committing an offence under Sections 323, 384 and 498A of the Indian Penal Code. It appears that after enquiry u/s 202, Cr PC, the learned Sub-Divisional Judicial Magistrate, took cognizance u/s 498A of the Indian Penal Code against only one person namely, Md. Kalim and not against other four persons who were named in the complaint petition and thereby processes were ordered to be issued against Md. Kalim only.

4. In course of trial, when the witnesses were being examined, a petition was filed on 5.3.2003 on behalf of the complainant, OP No. 2 herein, stating therein

that from the evidence of the five prosecution witnesses, the fact has come out that other four persons namely, Ahmad Hussain, Jamshed Hussain, wife of Sekhawat Hussain and Mustari Khatoon have also committed the offence and, therefore, they also be summoned to face trial. The defence, by filing a rejoinder, objected to the prayer of the complainant. The learned Sub-Divisional Judicial Magistrate in terms of the impugned order allowed the prayer of the complainant and directed to issue summons to the other four persons, against whom no cognizance of the offence was taken at the initial stage.

5. Out of the four accused persons, who were summoned u/s 319 of the Cr PC, two of them have filed this petition challenging the impugned order of the learned Sub-Divisional Judicial Magistrate.

6. The learned Counsel for the petitioner has submitted that the learned Sub-Divisional Judicial Magistrate, wrongly and illegally and in a routine manner has passed the impugned order summoning these petitioners to face trial in exercise of the power u/s 319 of the Cr PC. It is submitted that as a matter of fact there was no evidence on record so as to summon these two petitioners to face trial. It was further submitted that once at the initial stage of taking cognizance, the learned Court below applied his mind in course of enquiry u/s 202, Cr PC and came to a conclusion, that no prima facie case is made out against these two petitioners and thereby did not take cognizance against them therefore, now at this stage when no charge was also framed against them, they cannot be summoned and be directed to face trial in exercise of the powers u/s 319 of the Cr PC. In support of his submission the learned counsel for the petitioner has relied on a decision of Patna High Court in the case of Uma Shankar Sahay Vs. State of Bihar and Another, .

7. In order to appreciate the points raised by the petitioners it is necessary to notice the provisions envisaged u/s 319 of the Cr PC which is being reproduced hereinbelow :-

"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 summons, 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 witnesses reheard;

(b) subject to the provisions 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."

8. Section 319(1) envisages that the Court has got power to implead an additional accused, if it is found that he could be tried together with the accused who are already facing trial. u/s 319, Cr PC it is specifically made clear that it would be presumed that the newly added persons had been an accused person when the Court took cognizance of the offence of which enquiry and trial was commenced. The newly added accused can be tried only for the offence for which cognizance has already been taken against other accused persons.

Under Section 319, Cr PC persons other than the accused persons who are facing trial, can be tried together with those accused who were already facing trial. The exercise of the power u/s 319, Cr PC is wholly dependant upon the evidence, which comes during the trial from which it may appear that such person other, then the accused was also involved in commission of the offence.

9. The word "any person not being the accused" used in Section 319, Cr PC denotes that a person who is not facing trial and it certainly does not mean and include a person against whom no cognizance was taken. In other words even if, a person who was made an accused in a complaint or in the FIR and against whom no cognizance was taken by the Magistrate at the initial stage, if in course of trial, it appears to the trial Court that the evidence has come against those persons also against whom no cognizance was taken at the initial stage then the trial Court can very well summon those persons to face trial u/s 319, Cr PC if on the basis of the materials in record the trial Court comes to the conclusion that those persons also are involved in commission of the offence alleged.

10. The Supreme Court in the case of Dr. S.S. Khanna Vs. Chief Secretary, Patna and Another, have clearly held that though a person against whom a complaint is filed along with some other person who after an enquiry u/s 202 is not proceeded against by the Court he can be summoned at a later stage u/s 319 to stand trial for the very same or connected offence or offences along with the other person against whom process had been issued earlier by the Court. The jurisdiction of the Court u/s 319, Cr PC remains unaffected if other conditions are satisfied.

11. In the said very decision of the Supreme Court it has further been held that a person against whom a complaint is filed does not become an accused until, it decided to issue process against him.

12. Therefore, relying on the decision of the case of S.S. Khanna v. Chief Secretary, Patna and Anr. (supra) of the Supreme Court I hold that the learned trial Court was within his jurisdiction to summon these two petitioners to face

trial.

13. In view of the direct decision of the Supreme Court noticed above it is not necessary to discuss the decision of the Patna High Court cited on behalf of the petitioner which prima facie appears to be contrary to the decision of the Supreme Court.

14. So far the sufficiency of the materials on records for summoning these two petitioners are concerned, it appears from the impugned order that the learned SDJM has discussed the evidence of the prosecution witnesses, who were examined during trial and then has come to a finding that the witnesses have specifically deposed in the Court that those left out four accuse persons also committed marpit with the complainant and demanded Rs. 50,000/as dowry.

15. In view of the above finding of the learned Magistrate I hold that the other conditions regarding sufficiency of materials for summoning was also satisfied and, therefore, the learned SDJM rightly exercised power u/s 319, Cr PC and accordingly, by summoning them directed the petitioners to appear and face trial.

16. In view of my discussion and finding above, I find no merit in this application and thus is dismissed.