
(2010) 08 JH CK 0031
In the Jharkhand High Court

Jogender Singh @ Yogendra Singh and Birendra Singh	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 319

Citation : (2010) 4 JLJR 16 : (2011) CriLJ 1095 : (2011) 6 RCR(Criminal) 1424

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard Counsel for the petitioners and Counsel for the State.

2. Petitioners, by assailing the impugned order dated 02.02.2009 passed by the Additional Sessions Judge, F.T.C., Simdega, have challenged the order whereby the learned court below has directed the petitioners to appear and face trial and has opened a supplementary record for proceeding against the petitioners vide S.T. No. 69(A)/2008.

3. Facts of the case relevant for the disposal of this case are as follows:

On the basis of an F.I.R. lodged by the informant namely one Rameshwar Baraik, a case was registered for investigation on 03.01.2008. Both the petitioners were named in the F.I.R. and the allegations were levelled not only against the petitioners but also against some unknown persons. After concluding the investigation, the Investigating Officer submitted the charge-sheet recommending trial against accused Bijay Singh while not recommending the trial against the petitioners. However, the investigation continued to remain pending against other accused persons and later on, a supplementary charge-sheet was filed in which the Investigating Officer had recommended trial against accused Rangtu Ghansi, Santu @ Saotosh Lakwa and Bhutung Lakwa but with the specific observation and opinion that no material was collected in course of investigation against the present petitioners and therefore they were not

recommended for trial.

On the basis of the charge-sheet, the Magistrate took cognizance of the offence and issued summons to such of the accused persons against whom charge-sheet was submitted and who were recommended for trial. Though no such cognizance was taken against the present petitioners.

Subsequently, after complying with the provisions u/s 207 Cr.P.C., the learned Magistrate committed the case of the said chargesheeted accused persons to the Court of Sessions.

It was at this stage when the case after commitment, was pending before the Sessions Judge, that the accused persons had filed their application for bail and while disposing of the bail application, the Sessions Judge had observed that the present petitioners who were named in the F.I.R., but not chargesheeted, should also be directed to appear and face trial and on the basis of such observation, issued a direction to the office to issue summons and a separate supplementary record vide S.T. No. 69(A)/2008, was opened for the purpose of conducting trial of the present petitioners.

4. Learned Counsel for the petitioners has assailed the impugned order on the ground that it is thoroughly illegal, contrary to the provisions of the procedural law and has been passed without appreciation of the facts of the case in proper perspective.

Learned Counsel submits that the exercise of the powers u/s 319 Cr.P.C. can be made only when in course of trial against some of the accused persons, evidences are adduced which, on appreciation, would suggest the complicity of any other accused in the alleged offences. Prior to such stage, the provisions of Section 319 Cr.P.c. cannot be invoked at all.

5. Explaining in the context of the facts of the present case, learned Counsel submits that as it would be manifest from the materials available on record, the trial even against the co-accused persons namely those who were chargesheeted by the police, had not yet commenced since no charge was framed against them and yet, the learned court below had proceeded to invoke the powers of Section 319 Cr.P.C. for summoning the present petitioners only on the basis of the F.I.R.

6. Learned Counsel for the State fairly concedes that the facts stated by the petitioners appear to be correct and in the light of the undisputed facts, the impugned order whereby the learned Sessions Judge had invoked powers u/s 319 Cr.P.C. even without commencing trial of the accused persons and without obtaining evidences on record, cannot be supported.

7. Section 319 Cr.P.C. lays down the powers of the Court to proceed against other persons appearing to be guilty of offence. The provision reads as under:

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

(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. On a bare reading of the above provision it would be manifest that the power can be exercised only on evidence recorded in course of any inquiry or trial.

The word "inquiry", as it appears in the provision, refers to an inquiry conducted in a case instituted on a complaint other than police report.

It is amply clear that the power u/s 319 Cr.P.C. can be exercised by the concerned court only on the basis of evidence obtained in course of trial of the accused persons and which would suggest prima facie the need to proceed against persons other than the accused already facing trial, appearing to be the guilty of the offence.

9. In the present case, admittedly, the trial against none of the accused persons, including those who were chargesheeted and sent up for trial and against whom cognizance was taken, had commenced and therefore there could be no occasion for the court below to collect evidences. Furthermore, admittedly cognizance of the offence was taken on the basis of the police report and therefore there was no occasion for the court below to conduct any inquiry referred to in the provision u/s 319 Cr.P.C.

10. The law u/s 319 Cr.P.C. undoubtedly vests powers which may be exercised by the court and it is within its discretion to take an action under the provisions of the Section, but while doing so, the court is obliged to exercise the discretion judiciously having regard to the facts and circumstances of each case and upon arriving at a reasonable satisfaction that the prosecution would be able to prove the charges against whom the process is sought to be issued.

11. As to the stage when the court would be called upon to exercise such discretion, it is also well settled that such stage would be at the stage of

collecting evidence in course of trial conducted against some accused persons and in course of which and on the basis of evidence collected, if there is reasonable belief that persons other than the accused are also liable for the offence and there is possibility of their conviction and hence, they should be called upon to face trial jointly along with the other accused persons.

12. In this context one may refer to the case of Bholu Ram v. State of Punjab and Anr. 2009 (1) ECC 157 and to the judgement in the case of Kailash v. State of Rajasthan and Anr. 2008 (4) JLJR 246 (SC). In the case of Raj Kishore Prasad Vs. State of Bihar and another, while examining the scope and ambit of the provisions of Section 319 Cr.P.C., the Supreme Court has observed that "in order to apply the provisions of Section 319 Cr. P.C., it is essential that the need to proceed against the person other than the accused, appearing to be guilty of offence, arises only on evidence recorded in the course of any inquiry or trial. Proceedings before a Magistrate u/s 209 Cr. P.C. are patently not trial proceedings and were never considered so at any point of time. Before the amendment of the Code of Criminal Procedure in the present form, commitment proceedings had the essential attributes of inquiry and were termed as such."

13. Considering the aforesaid facts and circumstances and in the light of the well settled law, the impugned order of the learned Sessions Judge issuing summon against the petitioners calling upon them to face trial, in purported exercise of the discretion u/s 319 Cr.P.C., being contrary to the procedural law, is illegal.

14. For the reasons stated, I find merit in this application. Accordingly, this application is allowed. The impugned order of the court below dated 02.02.2009 passed by the Additional Sessions Judge, F.T.C., Simdega is hereby quashed and the proceeding initiated against the petitioners on the basis of the aforementioned impugned order vide S.T. No. 69(A)/2008, is also quashed.

However, this order may not prevent the trial court to consider, on the basis of evidences collected in course of trial of the other accused persons, as to whether the evidences do make out a case against the present petitioners for proceeding against them in the trial for the offences for which the cognizance was taken.