
(2004) 12 JH CK 0044

In the Jharkhand High Court

Case No : Criminal Revision No. 200 of 2003

Mukhlal Choudhary and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 23-12-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 209, 226, 227, 228
Penal Code, 1860 (IPC) — Section 395, 397

Citation : (2005) 1 BLJR 411 : (2005) 1 JCR 381

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.

Bench : Single Bench

Advocate : T.R. Bajaj, Randhir Singh and Hemant Kumar Shikarwar, for the Appellant; Assistant Public Prosecutor, P.C . Tripathy, N.N. Mishra and M. Upadhyay for Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. This revision application has been preferred by the petitioners against the order dated 21st February, 2003 passed by learned 3rd Additional Sessions Judge, Palamau at Daltonganj, u/s 319 of the Code of Criminal Procedure in Sessions Trial No. 130 of 1993, whereby and whereunder, the petitioners have been summoned to answer the charges u/s 395 and 397 of the Indian Penal Code and further as to why they be not put on trial together with the two accused, namely, Fagu Choudhary and Sarju Chaudhary, already facing trial.

2. According to the petitioners, it is at much belated stage i.e. after thirteen years and they have been summoned to answer the charges under Sections 395 and 397 of the Indian Penal Code, though there is no compelling reason, shown in the impugned order dated 21st February, 2003.

3. Admittedly, an FIR was lodged by the informant for the offence u/s 395 of the Indian Penal Code on 22nd August, 1990 against eight named accused persons,

on the basis of which Bishrampur Police Station Case No. 96 of 1990 dated 21st August, 1990 was registered. The Investigating Officer recorded the statements of the witnesses during the investigation, including the informant himself, who had named all the accused persons in the First Information Report as the persons, involved in commission of the offence u/s 395 of the Indian Penal Code. However, the Investigating Officer while submitted chargesheet only against two of them, namely, Sarju Choudhary and Fagu Chaudhary expressed doubt against the names of other accused persons. As such, their names were not mentioned in Column 2 of the chargesheet as the persons "not sent up for trial".

4. The learned Chief Judicial Magistrate, Palamau at Daltonganj, took cognizance of the offence against the aforesaid two accused persons on 20th May, 1992 and subsequently having found the offence triable exclusively by a Court of Sessions, committed the case to the Court of Sessions vide order dated 29th March, 1993. Thereafter, charges against those two accused persons were framed on 14th December, 2000 and three witnesses were examined by the trial Court i.e. PW 1 Umeshwar Mishra, examined on 16th April, 2001, PW 2 Indrajyoti Devi, examined on 16th June, 2001 and PW 3 Nageshwar Mishra, examined on 5th September, 2001.

5. Later on, the informant filed a petition on 8th January, 2003 through Addl. Public Prosecutor, praying therein, to summon rest of the accused persons i.e. the petitioners and to put them on trial together with the two accused, namely, Fagu Choudhary and Sarju Choudhary, which has been allowed by the learned 3rd Additional Sessions Judge, Palamau at Daltonganj, vide the impugned order dated 21st February, 2003, passed in Sessions Trial No. 130 of 1993 and the petitioners have been summoned to answer the charges, framed under Sections 395 and 397 of the Indian Penal Code and further as to why they be not put on trial together with the other two accused, already facing trial.

6. Learned counsel for the petitioners submitted that the impugned order has been passed after much delay i.e. 13 years and there is no compelling reason, shown in the order. It was further submitted that the learned Magistrate having taken cognizance only against two accused persons, namely, Fagu Choudhary and Sarju Choudhary, vide order dated 20th May, 1992, without giving any reference to rest of the accused i.e. petitioners, they should be treated to have been discharged. The informant ought to have moved before the learned Chief Judicial Magistrate by means of an application to the effect that cognizance be also taken against these petitioners, there being materials against them in the case diary. However, it was not done. If the informant would have moved the learned Chief Judicial Magistrate, who had the jurisdiction to take cognizance against these petitioners. But neither it was done at the appropriate stage nor the informant filed any protest petition for including the named of these petitioners as accused, which could have been treated as Complaint-cum-Protest Petition. No such action having been taken by the informant or the prosecution, after lapse of more than 12 to 13 years of the date of occurrence, now it was not

just and proper for the learned Court below to exercise power u/s 319 of the Code of Criminal Procedure, which is meant only for special cases and should not be used for the purposes of delaying the justice.

7. In the present case, admittedly the informant disclosed the names of eight persons in his fardbeyan, alleged to have committed the offence u/s 395 of the Indian Penal Code. But the police after investigation submitted charge-sheet against only two named persons, namely, Fagu Choudhary and Sarju Choudhary. Against rest of the named persons i.e. the petitioners, the police having doubt, in column 2 of the chargesheet, they were shown "not sent up for trial". The learned Chief Judicial Magistrate finding the offence triable exclusively by a Court of Sessions, rightly committed the case to the Court of Sessions, since he had no power to discharge any accused but to commit the case in accordance with the provisions of Section 209 of the Code of Criminal Procedure. No order of discharge was passed by the learned Chief Judicial Magistrate in respect of any person, named in the First Information Report, against whom chargesheet had not been submitted. It is a settled law that what is committed to the Court of Sessions is not an accused but the case. In this background, learned Sessions Judge rightly held that the Sessions Court can proceed not only against the accused, originally sent up for trial, but also against other persons, appearing to be guilty from the materials on record. The Court below has rightly held that after commitment, bar u/s 193 of the Code of Criminal Procedure is removed and the Court of Sessions, thereafter, exercises power as a Court taking cognizance and can function in the same manner, while examining an accused under Sections 226 to 228 of the Code of Criminal Procedure, as a Magistrate can do at the stage of Sections 239 and 240 of the Code of Criminal Procedure. When a case is committed to the Court of Sessions u/s 193 read with Section 209 of the Code of Criminal Procedure in respect of an offence, the Court of Sessions takes cognizance of the offence and not the accused and, as such, the Court u/s 319(1) of the Code of Criminal Procedure can add any person, not an accused before it, who appears to be involved in the crime, on the basis of the evidence, for being tried along with other accused.

This Court in the case of Mithilesh Kumar Singh v. State of Jharkhand, reported in 2002 (2) JLJR 304 has held that the Sessions Judge can issue processes and put the remaining accused persons on trial. In case any material comes during enquiry or trial as laid down u/s 319 of the Code of Criminal Procedure. In this connection, one may also refer to a decision of the Supreme Court in the case of Joginder Singh and Another Vs. State of Punjab and Another, wherein, the Court has held as follows :

".....It will be noticed that both u/s 193 and Section 209 the commitment is of "the case" and not of "the accused" whereas under the equivalent provision of the old Code viz. Section 193(1) and Section 270-A it was "the accused" who was committed and not the case". It is true that there cannot be a committal of the case without there being an accused person before the Court, but this only

means that before a case in respect of an offence is committed there must be some accused suspected to be involved in the crime before the Court but once the case in respect of the offence qua those accused who are before the Court is committed then the cognizance of the offence can be said to have been taken properly by the Sessions Court and the bar of Section 193 would be out of the way and summoning of additional persons who appear to be involved in the crime from the evidence led during the trial and directing them to stand their trial along with those who had already been committed must be regarded as incidental to such cognizance and a part of the normal process that follows it; otherwise the conferral of the power u/s 319(1) upon the Sessions Court would be rendered nugatory. Further Section 319(4)(b) enacts a deeming provision in that behalf dispensing with the formal committal order against the newly added accused. Under that provision it is provided that where the Court proceeds against any person under sub-section (1) then 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; in other words, such person must be deemed to be an accused at the time of commitment because it is at that point of time the Sessions Court in law takes cognizance of the offence.

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8. In view of the provisions of law, as referred to above, and the authoritative pronouncement of the Supreme Court and this Court, as discussed and quoted above, there being no bar and legal impediment in taking cognizance, if the petitioners have been summoned to answer the charges under Sections 395 and 397 of the Indian Penal Code and further as to why they be not put on trial together with the two other accused, already facing trial from before, this Court is not inclined to interfere with the impugned order dated 21st February, 2003. There being no merit, this revision application is hereby dismissed.