
(2010) 07 PAT CK 0170

In the Patna High Court

Case No : Criminal Miscellaneous No. 7815 of 2004

Pramod Tiwary and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 12-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 319, 398

Citation : (2012) 1 PLJR 462

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Mahendra Thakur, for the Appellant; None for the O.P. No. 2 and Mr. Choubey Jawahar for the State, for the Respondent

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The petitioners seek quashing of the order dated 12.2.2004 passed by the 2nd Assistant Sessions Judge, Hajipur, Vaishali, in connection with Sessions Trial No. 169 of 1997 (Lalganj P.S. Case No. 10 of 1996), by which he has summoned, the petitioners in exercise of his jurisdiction u/s 319 Cr.P.C. On 26.4.2004, the application was admitted with notice to the opposite party no. 2, who has appeared through vakalatnama but chosen not to be present in court today.

2. The argument of the petitioners is that the petitioners were not named in the First Information Report which was instituted on 28.1.1996 by the opposite party no. 2 against five accused persons, but thereafter the petitioners' complicity arose through the statement of the witnesses examined during investigation due to which the police submitted charge-sheet in the matter and cognizance was taken. Thereafter, when the case was committed to the Court of Sessions, the petitioners filed an application u/s 227 Cr.P.C. for discharge and the same was allowed by the order dated 22.8.2001 (Annexure-2). However, when some witnesses were examined during trial they disclosed the complicity of the petitioners and then an application u/s 319 Cr.P.C. was filed on behalf of the

opposite party no. 2, and the petitioners were summoned in exercise of the said jurisdiction.

3. Submission of the petitioners is that once the petitioners were discharged by a competent court the matter had become final with regard to the petitioners and they could not be put on trial for the same offence again. More so, because the opposite party no. 2 took no action as provided u/s 398 Cr.P.C. In support of his contention, he has relied on a decision reported in Sohan Lal and others Vs. State of Rajasthan, .

4. While considering the provision of Sections 319 and 398 Cr.P.C. the Hon"ble Supreme Court was of the view that Section 319 Cr.P.C. where the crucial words are "any person not being an accused", was not applicable to a person who was an accused, but, stood discharged by a competent court. According to the Apex Court, the accused then goes out of the reach of Section 319 Cr.P.C. It was of the view that once discharged the issue had reached finality and the accused was protected from further prosecution subject to Section 398 Cr.P.C. The same view was followed by this court in a decision reported in 2001 Cr.L.J. 2778 (Smt. Lalita Devi and Another vs. Nandu Singh and Another).

5. In view of such, this application is allowed and the order dated 12.2.2004 passed by the 2nd Assistant Sessions Judge, Hajipur, Vaishali, in S. Tr. No. 169 of 1997, summoning the petitioners to face trial u/s 319 Cr.P.C. is hereby set aside. Application stands allowed.