
(2019) 07 JH CK 0080

In the Jharkhand High Court

Case No : Criminal Revision. No. 1078 Of 2006

Rakesh Kumar Choudhary @ R.K. Choudhary

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302
Code Of Criminal Procedure, 1973 — Section 227, 319

Citation : (2019) 07 JH CK 0080

Hon'ble Judges : Anil Kumar Choudhary, J

Bench : Single Bench

Advocate : Jai Prakash

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned Addl. P.P. for the State.
2. This criminal revision is directed against the order dated 11.12.2006, passed by the learned Additional Judicial Commissioner-XVIII, Ranchi in Sessions Trial No. 54 of 2002, refusing to discharge the petitioner of the charges under section 302/201 of the Indian Penal Code.
3. Perusal of the record reveals that the petitioner has been named in the F.I.R. of this case which relates to murder of Ram Charan Bedia and the petitioner was also the owner of the car bearing registration no. BR14C 3377. After due investigation, police submitted charge sheet only against the coaccused -Shanker Bedia. The learned trial court vide order dated 16.07.2004 in Sessions Trial No. 54 of 2002 has arrayed this petitioner as an accused by exercising the powers under section 319 Cr.P.C. The order by which the petitioner has been arrayed as an accused in this case has not been challenged by the petitioner. Subsequently, the petitioner appeared in the case and filed a petition with a prayer to discharge him. The learned trial court considering the fact that the informant in his deposition before the court has suspected that inter alia the petitioner along with

the co-accused persons has killed the said Ram Charan Bedia and concealed his dead body in bushy forest as well as considering the testimony of the witnesses who have stated that in the car of the petitioner, certain persons including the co-accused persons were going on towards Hundru and the said car was seen going back from Hundru and other materials in the record, came to a conclusion that there is sufficient material in the record to frame charge for the offence punishable under section 302/34 of the Indian Penal Code against the petitioner and rejected the petition for discharge.

4. Mr. Jai Prakash the learned counsel for the petitioner submitted that the impugned order has been passed against the materials available in the record and the trial court has failed to discharge the duty cast upon it while considering the petition for discharge filed by the petitioner under section 227 of the Code of Criminal Procedure. Hence, it is submitted that the impugned order be set aside and the petitioner be discharged in the Sessions Trial No. 54 of 2012.

5. Learned Addl. P.P. on the other hand defended the impugned order and submitted that there is sufficient material in the record to frame charge in the case and as the order passed under section 319 of the Code of Criminal Procedure by arraying the petitioner as an accused in this case has not been challenged and attained finality. It is then submitted that there is no merit in this criminal revision hence this criminal revision be dismissed.

6. It is a settled principle of law that there is a material difference between an accused since inception of an accused who is added as such under section 319 of the Code of Criminal Procedure. An accused since inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under section 319 of the Code of Criminal Procedure is necessarily heard before being so added. The person who is added as an accused under section 319 of the Code of Criminal Procedure cannot be discharged because the standard of proof employed for summoning a person as an accused under Section 319 CrPC, is higher than the standard of proof employed for framing a charge against an accused as the standard of proof employed in summoning a person exercising power under section 319 CrPC the court concerned is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to the conviction of the persons sought to be added as the accused in the case whereas the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. Moreover a person is added as an accused under Section 319 CrPC, on the basis of evidence; whereas an accused is discharged under Section 227 CrPC, on a sifting of material collected i.e. the record of the case and the documents submitted herewith. As has also been held by the Hon'ble Supreme Court of India in the case of Jogendra Yadav v. State of Bihar reported in (2015) 9 SCC 244, paragraph - 9,11 and 13 of which reads as under:

9. It was, however, urged by the learned counsel for the appellants that in order

to avail of the remedies of discharge under Section 227 CrPC, the only qualification necessary is that the person should be an accused. The learned counsel submitted that there is no difference between an accused since inception and the accused who has been added as such under Section 319 CrPC. It is, however, not possible to accept this submission since there is a material difference between the two. An accused since inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under Section 319 CrPC, is necessarily heard before being so added. Often he gets a further hearing if he challenges the summoning order before the High Court and further. It seems incongruous and indeed anomalous if the two sections are construed to mean that a person who is added as an accused by the court after considering the evidence against him can avail remedy of discharge on the ground that there is no sufficient material against him. Moreover, it is settled that the extraordinary power under Section 319 CrPC, can be exercised only if very strong and cogent evidence occurs against a person from the evidence led before the Court.

11. Thus, it does not stand to reason that a person who is summoned as an accused to stand trial and added as such to the proceedings on the basis of a stricter standard of proof can be allowed to be discharged from the proceedings on the basis of a lesser standard of proof such as a prima facie connection with the offence necessary for charging the accused.

13. We are not unmindful of the fact that the interpretation placed by us on the scheme of Sections 319 and 227 makes Section 227 unavailable to an accused who has been added under Section 319 CrPC. We are of the view, for the reasons given above, that this must necessarily be so since a view to the contrary would render the exercise undertaken by a court under Section 319 CrPC, for summoning an accused, on the basis of a higher standard of proof totally infructuous and futile if the same court were to subsequently discharge the same accused by exercise of the power under Section 227 CrPC, on the basis of a mere prima facie view. The exercise of the power under Section 319 CrPC, must be placed on a higher pedestal. Needless to say the accused summoned under Section 319 CrPC, are entitled to invoke remedy under law against an illegal or improper exercise of the power under Section 319, but cannot have the effect of the order undone by seeking a discharge under Section 227 CrPC. If allowed to, such an action of discharge would not be in accordance with the purpose of Criminal Procedure Code in enacting Section 319 which empowers the Court to summon a person for being tried along with the other accused where it appears from the evidence that he has committed an offence. (Emphasis Supplied)

7. Having heard the rival submissions made at the Bar and considering the facts that the order by which the petitioner was added as an accused has not been challenged by the petitioner and keeping in view the materials available in the record, this court is of the considered view that there is no illegality in the impugned order passed by the learned court below in rejecting the prayer for

discharge in view of the settled principles of law as discussed above. Hence this Court is of the considered view that this is not a fit case where the impugned order warrants interference of this Court in exercise of its revisional jurisdiction.

8. Accordingly, this criminal revision being without any merit is dismissed.

9. Let the Lower Court Record be sent back to the court below forthwith along with a copy of this Judgment.