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**(2007) 04 PAT CK 0111**  
**In the Patna High Court**  
**Case No : Cr. Misc. No. 35639 of 2004**

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|-------------------------------------|------------|
| Ram Nandan Singh @ Ram Nandan Yadav | APPELLANT  |
| Vs                                  |            |
| State of Bihar and Another          | RESPONDENT |

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**Date of Decision :** 02-04-2007

**Acts Referred:**

**Citation :** (2007) 04 PAT CK 0111

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### **Judgement**

Sadanand Mukherjee, J.—This is an application for quashing the order dated 4.7.1996 passed by the Additional Chief Judicial Magistrate, Sheikhpura in Sheikhpura P.S. Case No. 186 of 1995 (State of Bihar v. Ramnandan Yadav and Ors.) against the petitioner in which cognizance has been taken u/s 302/34 of the I.P.C. and 27 of the Arms Act against six persons including the petitioner. The petitioner was exonerated and the final form was submitted against him.

2. F.I.R. was lodged on the basis of fardbeyan of Shri Tejdhari Yadav of village Munanakpur against six persons including the petitioner in Sheikhpura P.S. Case No. 186 of 1995 under Sections 302/34 of the I.P.C. and 27 of the Arms Act.

3. The prosecution case is that on 23.7.1995 at 10 P.M., the informant along with his son Dinesh Kumar @ Madan Kumar (deceased) were sleeping at Bihta Chimani. On knocking of the door, Dinesh Kumar opened the door and the accused persons including the petitioner entered into the room. Further case of the prosecution is that the accused persons were identified in the light of the lamp. Manoj Yadav and Dipu Yadav caught hold of Dinesh Kumar and co-accused Ramnandan Yadav fired shot at him. Accused Sital Yadav threw acid on his body. The informant concealed himself somehow under the Bed. All the six accused persons fled away on two motor-cycles.

4. It has been submitted that during investigation Deepnagar P.S. Case No. 24 of 1994 under Sections 409, 420, 468 and 120B I.P.C. was instituted against several persons including Mukhiya Kamla Prasad. Laldeo Yadav, uncle of this petitioner was a witness who was killed by Kamla Prasad and others in the night of 3.4.1994 at 1.30 hours for which Bihta P.S. Case No. 8 of 1995 u/s 396 of the

I.P.C. was instituted against Kamla Prasad and others including son of the informant which ended in conviction in Sessions Trial 323 of 1005. In the present case final form was submitted so far as the petitioner is concerned and he was shown as not sent-up for trial. The present case against the petitioner was lodged due to above grudge. The case has been committed to the Court of Sessions and the same is pending in the Court of A.D.J., Fast Track Court, Sheikhpura vide S.T. No. 690 of 1997. It is also submitted that no prima facie case was made out against the petitioner from perusal of the case diary and the supervision note and there is misuse of the processes of the Court.

5. It has been submitted that the impugned order was passed without waiting for any evidence against the petitioner u/s 319 of the Code of Criminal Procedure.

6. It has been submitted on behalf of the petitioner that although prima facie no case is made out against the petitioner, case was proceeded without jurisdiction and the order of the learned Additional Chief Judicial Magistrate, Sheikhpura, issuing process against accused Ram Nandan Singh @ Ram Nandan Yadav u/s 302/34 of the I.P.C. and 27 of the Arms Act, is not warranted under law as the final form has already been submitted against the petitioner showing his participation as false and other accused persons were sent up for trial.

7. It has been indicated that the place of occurrence was only at 200 yards from south of village Bihta. During the course of investigation none of the villagers supported that they heard any sound of firing in the night and none of them was able to say that when the informant (Tejdhari Yadav) came there. It is submitted on behalf of the petitioner that in course of investigation it transpired that Deep Nagar Police Station Case No. 24 of 1994, under Sections 409, 420, 468 and 120B of the I.P.C. was instituted against several persons including Mukhiya Kamla Prasad friend of the informant Tejdhari Yadav, in which uncle of this petitioner Lal Das Yadav, was a witness, who was killed by Kamla Prasad and others in the night between 3/4 night of April, 1995, at 1.30 hours for which Deep Nagar P.S. Case No. 8 of 1995 u/s 396 of the I.P.C. against Kamla Prasad and several others including the sons of the informant was instituted which ended in conviction in Sessions Trial No. 323 of 1995, in which uncle of this petitioner was informant. It is further submitted that final form was submitted after proper investigation and five accused persons were sent-up for trial. The petitioner was not sent up for trial.

8. However, it appears from perusal of the impugned order of learned Additional Chief Judicial Magistrate, Sheikhpura that processes were issued against accused Ram Nandan Singh @ Ram Nandan Yadav on 17.7.1996 after perusal of the charge-sheet and the case diary.

9. On issuance of notice, Opposite Party No. 2, namely, Tejdhari Yadav, (informant) appeared and both parties were heard.

10. On behalf of the petitioner reliance has been placed in the case of Kishori Singh and Ors. v. State of Bihar and Anr. reported in (2004) 13 SCC 11 wherein

and whereunder the Hon"ble Apex Court has concluded that the Magistrate could not have issued process against those persons who may have been named in the F.I.R. as accused persons, but not charge-sheeted in the charge-sheet that was filed by the police u/s 173 of the Cr.P.C.

11. In the order, the Apex Court held as follows:

So far as those persons against whom charge-sheet has not been filed, they can be arrayed as "accused persons" in exercise of powers u/s 319 Cr.P.C. when some evidence or materials are brought on record in course of trial or they could also be arrayed as "accused persons" only when a reference is made either by the Magistrate while passing an order of commitment or by the learned Sessions Judge to the High Court and the High Court, on examining the materials, comes to the conclusion that sufficient materials exist against them even though the police might not have filed charge-sheet, as has been explained in the latter three-Judge Bench decision. Neither of the contingencies has arisen in the case in hand.

12. A Three- Judge Bench of the Apex Court while dealing with this matter and perceiving the divergent opinions while directing the matter to be placed before the Hon"ble the Chief Justice for placing the matter before still the larger bench observed in the case of Dharam Pal and Ors. v. State of Haryana and Anr. reported in (2004) 13 SCC 11, as follows:

It, however, appears that in a case triable by the Court of Session, in law, a Magistrate would have no power to summon for trial an accused mentioned in column 2 to be tried with other accused and, to that extent, the impugned order of the High Court may have to be set aside but immediately the question involved herein would arise when the matter would be placed before the Sessions Court.

13. On behalf of the petitioner reliance has also been placed on Ranjit Singh Vs. State of Punjab, for dealing with the power with the Sessions Court as follows:

With the committal order, the Sessions Court gets unfettered jurisdiction to take cognizance of the offences involved in the case. But the crucial question is whether such jurisdiction would envelop powers to summon any person as an accused other than those covered by the committal order. From the stage of committal till the Sessions Court reaches the stage of evidence collection indicated in Section 230 of the Code, that court can deal with only the accused referred to in Section 209 of the Code. There is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused.

Once the Sessions Court takes cognizance of the offence pursuant to the committal order, the only other stage when the court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers u/s 319 of the Code can be invoked. There is no other power for the Sessions Court to permit addition of new person or persons to the array of

the accused. However, it is not necessary for the Court to wait until the entire evidence is collected for exercising the said powers.

14. On behalf of the opposite party reliance has been placed in the case of Ashok Yadav and Another Vs. The State of Bihar , wherein and whereunder a Bench of the Court decided the matter while discussing the case laws, namely, Kishori Singh and Ors. v. State of Bihar (Supra), India Pvt. Ltd. v. Karnatka 1989 SC 885, Swil Ltd. v. State of Delhi and Ors. as reported in 2001(4) P.L.J.R. SC 163 , Raj Kishore Prasad Vs. State of Bihar and another, and Horil Sao and Others Vs. The State of Bihar and Another in which it was held that it cannot be said that the Magistrate can not disagree with the report of the Police while exercising its power u/s 190 of the Cr.P.C. and as such accused persons who were named in the F.I.R. but not charge-sheeted can be summoned by the Magistrate, in exercise of power u/s 190 of the Cr.P.C. after perusal of the material collected during the course of investigation and formed part of the report u/s 173 Cr.P.C.

15. Learned Counsel for the Opposite Party also indicated the impact of the judgment of the Apex Court Swil Ltd. v. State of Delhi reported in AIR 2001 SC 2747 in which it was held that the persons who has not been joined as accused in the charge-sheet can be summoned at the stage of taking cognizance u/s 190 Cr. P.C. and there is no question of applicability of Section 319 of the Cr. P.C. at that stage.

16. However, it appears that in Kishori Singh's case (Supra) the Hon'ble Apex Court has taken a different view as stated above and while discussing the aforesaid case as also Ranjit Singh's case by three Judge Bench (2004) 13 SCC 13 held as follows:

After going through the provisions of the Code of Criminal Procedure and the aforesaid two judgments and on examining the order dated 10.6.1997 passed by the Magistrate, we have no hesitation to come to the conclusion that the Magistrate could not have issued process against those persons who may have been named in the FIR as accused persons, but not charge-sheeted in the charge-sheet that was filed by the police u/s 173 Cr.P.C.

So far as those persons against whom charge-sheet has not been filed, they can be arrayed as "accused persons" in exercise of powers u/s 319 Cr.P.C. when some evidence or materials are brought on record in course of trial or they could also be arrayed as "accused persons" only when a reference is made either by the Magistrate while passing an order of commitment or by the learned Sessions Judge to the High Court and the High Court, on examining the materials, comes to the conclusion that sufficient materials exist against them even though the police might not have filed charge-sheet, as has been explained in the latter three-Judges Bench decision. Neither of the contingencies in the case in hand.

17. The views taken in the larger Bench cases as in three Judges Bench case Ranjit Singh Vs. State of Punjab, followed in Kishori Singh's case (supra) Singh's case (supra) and also the observation of another three Judges Bench case in the

case of Dharampal Singh v. State of Haryana and Ors. (Supra) lead to the view considered above that the learned Magistrate could not have issued processes against the petitioner who has not been charge-sheeted as such person can be arrayed as accused persons in exercise of powers only u/s 319 of the Cr.P.C. when some evidence or materials are brought on record in course of trial.

18. In the aforesaid paragraphs a number of views of the Hon'ble Supreme Court have been referred to. But in view of the decisions in three Judges Bench Cases and since no other decision of any larger Bench has been brought to the notice of this Court considering the contention of the petitioner on the face of aforesaid three Judges Bench decision, with the observations mentioned therein, I quash the order of cognizance and issuance of process against the petitioner above on the premises and observations as laid down in the aforesaid decisions of the apex Court.

19. Order of cognizance and issuance of processes stands quashed only against the petitioner.

20. Petition u/s 482 Cr.P.C. is allowed on the premises laid down above.