
(2009) 05 PAT CK 0010
In the Patna High Court
Case No : Criminal Rev. No. 206 of 2006

Sakil Ahmad @ Shakil Mian	Vs	APPELLANT
The State of Bihar and Another		RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319

Citation : (2009) 3 PLJR 399

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Dhananjay Kumar, for the Appellant; Jharkhandi Upadhaya for the State and Mr. Sangeet Deokuliar for the O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—The present revision has been preferred by one of the FIR named accused of Kalyanpur P.S. Case No. 28 of 2003 who has been summoned u/s 319 Cr.P.C. by the learned 1st Additional Sessions Judge, East Champaran at Motihari vide order dated 7.1.2006 passed in Sessions Trial No. 580 of 2004 arising out of the said Kalyanpur P.S. Case to face the trial as additional accused alongwith the others already facing the trial. It appears that one Jadunandan Mahto, the informant impleaded herein as O.P. No. 2, gave his fardbeyan at 11.30 P.M. on 28.4.2003 in respect of an occurrence which took place earlier the same day at about 9 P.M. According to the informant he taught children at the door of Awadesh Mahto and like all other days on the fateful day after he taught the children while he proceeded towards eastern side of the village in the company of Razaul, sound of alarm was heard coming from the eastern side attracted whereby many villagers alongwith Umesh Mahto, the son of the petitioner, ran in that direction. It is alleged that soon thereafter a few villagers returned and from amongst them somebody informed him that some one had killed his son by means of chhura whereupon he rushed in the same direction and saw the blood stained body of his son lying in the land of Sk. Majid. It is

disclosed that a land related dispute is going on between co-villager Jai Narayan Mahto and Awadesh Mahto and in one of the cases between them he had appeared as a witness on behalf of Awadesh Mahto which had angered Jai Narayan Mahto. The informant was apprehensive that it was Jai Narayan Mahto and Razaur who had killed his son by means of chhura. It further appears that after due investigation the police submitted a charge-sheet against accused Sk. Razaur and non FIR accused Sk. Saddam even as the investigation against the petitioner and Jai Narayan Mahto was kept pending. It further appears that thereafter the two charge-sheeted accused were put on trial and in course thereof on a petition being filed by the Additional P.P. the learned Sessions Court summoned the petitioner and another to face the trial as additional accused under the provisions of Section 319 Cr.P.C. as four of the prosecution witnesses examined thus far had stated about complicity of the petitioner and the other in the crime.

2. The specific stand taken by the petitioner herein is that when the investigation is already pending against the petitioner then on the basis of evidence gathered in course of the trial issuance of summons to certain persons to face the trial as additional accused u/s 319 Cr.P.C. was not only unwarranted but an abuse of the process of the Court.

3. The provisions of Section 319 Cr.P.C. comes into operation at the post cognizance stage when it appears to the court from the evidence recorded at the trial that any person other than those named as offenders appears to have committed any offence in relation to the incident for which the co-accused are on trial. The basic requirement for invoking the provisions of Section 319 Cr.P.C. is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person who is not arraigned as an accused in that case has committed an offence for which that person could be tried together with the accused already arraigned. The court is required to have reasonable satisfaction from the evidence already collected regarding two aspects, namely, that the other person has committed an offence and that for such offence that other person could be tried alongwith already arraigned accused. Gainful reference for the purpose may be made to the decision of Michael Machado and Another Vs. Central Bureau of Investigation and Another, .

4. Sub-sections (1) and (2) of Section 319 Cr.P.C. provides for a situation when a court hearing a case against a certain accused person finds from the evidence that some person or persons other than accused before it, is/are also connected in the very offence or any connected offence; and empowers the court to proceed against such person or persons for the offence which he or they appear to have committed and to issue process for the purpose. For the purpose it is not necessary for the court to wait till the entire evidence is collected for exercising the said powers.

5. In the instant case it appears from the impugned order that four prosecution witnesses examined at the trial had stated in their deposition that they had seen

the present petitioner and another (those against whom investigation was pending) fleeing away alongwith the accused persons already facing the trial. In *Joginder Singh and Another Vs. State of Punjab and Another*, it was held that the expression "any person not being an accused" includes a person who has been dropped by the police during investigation and against whom the evidence comes before the court that he is also involved in the offence. Then again in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, , it was held by the Apex Court that the accused person against whom proceedings have been quashed is also a person "not being the accused" and the court can take cognizance against him and try him alongwith the other accused if the prosecution produces evidence and the court is satisfied about his involvement in the alleged offence. In view of the categoric findings of the Apex Court, referred to above, I find no apparent illegality or impropriety in the impugned order passed by the learned 1st Additional Sessions Judge, East Champaran at Motihari, summoning the petitioner u/s 319 Cr.P.C. Accordingly, there being no merit in this application, the same is dismissed.