
(2010) 03 OHC CK 0068
In the Orissa High Court

Sri Kelu Charana Jena and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 294, 323, 341, 506

Citation : (2010) CLT 662 (Suppl CrI) : (2010) 1 OLR 682

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Nayak, J.—Order dated 30.06.2006 passed by the learned C.J.M., Jagatsinghpur in G.R. Case No. 374 of 2001 exercising power u/s 319, Cr.P.C. and issuing summons to the present petitioners to stand their trial is the subject matter of challenge in this revision.

2. In G.R. Case No. 374 of 2001 before the C.J.M., Jagatsinghpur one Rabindra Nath Jena was facing trial for alleged commission of offences under Sections 341/323/294/506 of the I.P.C. During course of trial, the A.P.P. filed a petition u/s 319, Cr.P.C. stating that the evidence have been brought out against Kelu Ch. Jena, Dillip Kumar Jena, Ranjan Jena and Chita Jena (petitioners) for commission of offences by them and the names of the said persons also appeared in the F.I.R. and, therefore, they be summoned to face the trial. On consideration of the materials and evidence on record, the Court below came to hold that the present petitioners have committed the offences alleged in the instant case and, therefore, they are required to be tried together with the other accused person. Accordingly, it directed for issuance of summons to the present petitioners.

3. Mr. C.R. Lenka, learned Counsel for the petitioners contended that out of seven prosecution witnesses examined during the trial before the Court below, only two witnesses viz., P.Ws.6 and 7 implicated the present petitioners and, therefore there is no sufficient evidence before the Court below to exercise power

u/s 319, Cr.P.C. and to issue summons to the petitioners. It is also his submission that the investigating agency having not charge-sheeted the present petitioners though they were named in the F.I.R., it is not open to the Court to exercise power u/s 319, Cr.P.C. His further submission is that evidence of P.Ws.6 and 7, which has been taken into consideration by the Court below to exercise its discretionary power u/s 319, Cr.P.C, being not sufficient or adequate for convicting the petitioners, the Court below should not have exercised its discretionary power.

4. Mr. Goutam Mishra, learned Additional Standing Counsel, relying upon several decisions of the Supreme Court as well as this Court, refuted all the contentions raised on behalf of the petitioner. It is submitted by him that non-filing of charge-sheet against a person is not material for the purpose of exercising power u/s 319, Cr.P.C. by the Court, if it appears from evidence that the said person committed any offence for which he could be tried together with the accused. He further submits that sufficiency or adequacy of evidence for the purpose of coming to a conclusion that the person is guilty of the offence is not to be considered for exercising the discretion and what is necessary is that it must be appearing from the evidence that the person concerned has committed an offence for which he could be tried together with the original accused.

5. Section 319, Cr.P.C. provides as under:

319. Power to proceed against other persons appearing to be guilty of offence:-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose of aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under Sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard :

(b) subject to the provisions of clause (a), 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.

It is evident from the impugned order of the learned C.J.M., that not only the petitioners were named in the F.I.R. as accused persons, but the informant

(victim) and his son, the eyewitness, implicated them in their statement given to the Investigating Officer. Further, the informant and his son, who have been examined as P.Ws.6 and 7, have in their evidence in Court specifically implicated the present petitioners ascribing different roles played by each of the petitioners during the occurrence.

6. Regarding the nature and quantity of evidence that may be necessary for exercising the discretionary power u/s 319, Cr.P.C, it has been held by the Hon''ble Supreme Court in the case of Rakesh and Anr. v. State of Haryana 2001 (II) OLR 333 as follows :

12. Further, the scope of Section 319 was considered by this Court in Ranjit Singh Vs. State of Punjab, . In paragraph 10, the Court held that Sub-section (1) of Section 319 contemplates existence of some evidence appearing in the course of trial where from the Court can prima facie conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named by the police. The Court has also clarified that:

Of course it is not necessary for the Court to wait until the entire evidence is collected for exercising the said powers.

7. Interpreting the expression, "appears to have committed" used in Sub-section (1) of Section 319, Cr.P.C., this Court have already held in the case of Radharani Panda Vs. Arnapurna Padhi alias Panda and Another, as follows :

...The expression "appears to have committed" used with reference to such person clearly shows that material to link him with the offence must exist. The adequacy or otherwise of the material for the ultimate result of trial is not the determinative factor.

8. In the case of Ram Pal Singh and Others Vs. State of U.P. and Another, , which is exactly a similar case as that of the present one, where some accused persons named in the F.I.R. were not charge-sheeted, but evidence came out against them during trial, the Hon''ble Supreme Court upheld the order of the Sessions Judge invoking power u/s 319, Cr.P.C. and issuing process to those accused persons. The Supreme Court held as under:

16. All that is required by the Court for invoking its powers u/s 319, Cr.P.C. is to be satisfied that from the evidence adduced before it, a person against whom no charge had been framed, but whose complicity appears to be clear, should be tried together with the accused. It is also clear that the discretion is left to the Court to take a decision on the matter.

9. Considering the evidence of P.Ws. 6 & 7 in the light of the aforesaid principles, I am satisfied that the discretionary power of the Court below has been exercised judiciously and properly and the impugned order suffers from no infirmity.

The revisions is, therefore, dismissed.