
(2010) 02 JH CK 0120
In the Jharkhand High Court

Surendra Kumar Thakur @ Surendra Kumar @ Suraj	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 302, 304B, 34

Citation : (2010) 02 JH CK 0120

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—By this application u/s 482 Cr.P.C. the petitioner has prayed for quashing the order dated 5.10.2005 passed by Addl. Sessions Judge, Fast Track Court-II, Bokaro in Sessions Trial No. 82 of 2003 whereby he has allowed the application filed by the prosecution u/s 319 Cr.P.C. and summoned the petitioner and others to face trial u/s 302 I.P.C. and Section 3/4 of the Dowry Prohibition Act.

2. The informant, who is father of the deceased, lodged a first information report on 13.2.2002 alleging murder of his daughter by the accused persons. On the basis of F.I.R., a case was instituted and the Investigating Officer arrested the husband of the deceased and after investigation, submitted charge-sheet u/s 304B/34 I.P.C. against the husband Rajesh Kumar Thakur only. So far other accused persons including petitioner are concerned, final form was submitted. The Sessions Court proceeded with the trial against one of the accused persons, namely, husband of the deceased and after the conclusion of the trial, learned Addl. Sessions Judge passed judgment convicting the accused-husband for the offence u/s 302 I.P.C. While convicting the accused-husband, the Addl. Sessions Judge also allowed the application filed by the prosecution u/s 319 Cr.P.C. and ordered for issuance of summons against ether accursed persons including the

petitioner.

3. I have heard Mr. K.K. Singh, learned Counsel for the petitioner, and the learned A.P.P.

4. The only question that falls for consideration is as to whether the Sessions Judge in exercise of power u/s 319 Cr.P.C. has committed any error of law in issuing summons against other accused persons who were earlier not charge-sheeted. So far this question is concerned, it is no longer *res Integra*. The Supreme Court in the decision rendered in the case of *Joginder Singh and Anr. v. State of Punjab and Anr.* AIR 1979 S.C. 339, has held that the expression "any person not being the accused" occurring in Section 319 clearly covers any person who is not being tried already by the Court. The provision clearly shows that even persons who have been dropped by the police during the investigation but against whom evidence showing their involvement in the offence comes before the Court are included in the said expression. It is, therefore, clear that even a person who has been discharged earlier can also be summoned to face trial if evidence recorded during the trial shows his complicity in the crime. Recently in the case of *Smt. Rukhsana Khatoon v. Sakhawal Hnssain and Ors.* 2002 AIR SCW 2493, the Supreme Court observed that any of those persons named in the F.I.R. but not charge-sheeted can be summoned and arraigned as accused u/s 319 Cr.P.C. when evidence of prosecution witness corroborates the role of these persons in the crime of the offence.

5. In the instant case, from perusal of the impugned order, it appears that during the trial of the husband, altogether 17 witnesses were examined including son and daughter of the accused. They are eyewitnesses of the occurrence. PWs. 5, 6, 12 and 13 and the informant PW.16 all have supported the case of the prosecution and the Court found that there were sufficient materials against all the accused persons for summoning them to face the trial. In my considered opinion, therefore, the order passed by the Sessions Judge u/s 319 Cr.P.C. summoning the other accused persons including the petitioner cannot be said to be illegal or without jurisdiction.

6. For the reasons aforesaid, the impugned order needs no interference by this Court. This application is, accordingly, dismissed.