
(2007) 09 PAT CK 0065
In the Patna High Court
Case No : Cr. Misc. No. 30051 of 2007

Tarsim Singh

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 20-09-2007

Acts Referred:

Citation : (2007) 09 PAT CK 0065

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—This application has been filed to quash the order dated 30.4.2007 passed by IX Addl. Sessions Judge. Muzaffarpur in Trial No. 43 of 2007 whereby the learned Additional Sessions Judge has issued processes against the petitioner u/s 319 Cr.P.C. to face trial alongwith the accused persons.

2. It appears that on 13.2.2004, the personnel's of D.R.I. Muzaffarpur a arrested two persons, namely. Somnath and Sarjeet alongwith 220 kgms. of POPPV husk/ straw kept in false cavity made in truck bearing No. PB-08L-9396. Accordingly, after enquiry and meeting of other formalities, complaint was filed against both of them under provisions of N.D.P.S. Act. After cognizance, both were put on trial. In course of trial, before charge, the prosecution examined two witnesses, namely. P.W.1, Rajesh Kumar Srivastava and P.W.2. Munarik Ram. Thereafter, the prosecution filed a petition dated 12.9.2006 to add the petitioner as additional accused, being owner of the truck in question. The learned Additional Sessions Judge on the basis of material collected during enquiry i.e. seizure list, confessional statements etc. as well as evidence or the witnesses recorded before charge allowed the petition and made the petitioner as additional accused u/s 319 Cr.P.C.

3. Heard the learned Counsel for the petitioner as well as the learned Counsel for the Union of India.

4. It is submitted on behalf of the petitioner that the witnesses examined before the charge have not stated anything against the petitioner. However, the learned

Additional Sessions Judge on the basis of the materials collected before filing of the complaint case has added the petitioner as additional accused. Which is illegal and bad in law. It is further submitted that the word "evidence" mentioned in Section 319(1) Cr.P.C. is the evidence adduced during trial of the case and not the material collected during the enquiry made before filing of the case. For that the learned Counsel for the petitioner has relied upon a decision of the apex court reported in Ranjit Singh Vs. State of Punjab,

5. On the other hand, the learned Counsel for the opposite party has contradicted the submission of the learned Counsel for the petitioner and submitted that the word "evidence" mentioned in Section 319(1) Cr.P.C. also includes material collected prior to filing of the case. For that he has relied upon a decision reported in 2006 Cr. Law Journal 3854 Satish Chand singhal v. State of Gujarat and Ors.

6. So far evidence of P.Ws. 1 and 2 is concerned (Annexures 2 & 2/1), there is nothing to show complicity of the petitioner in the allseed crime. Both the witnesses have only proved seizure of the illicit articles from possession of the accused kept in false cavity of the truck in question. They have not named this petitioner. Thus, till today no evidence has been brought on record by prosecution during trial to show complicity of the petitioner in the crime. However, the order in question goes to show that the learned Additional Sessions Judge has made the petitioner as additional accused on the basis of the confessional statement of the accused recorded before filing of the complaint as well as seizure list.

7. The main question for consideration is as to whether a person can be made as additional accused u/s 319 Cr.P.C. On the basis of material collected during pre-trial stage. The learned Counsel for the Union of India has relied upon a decision of Gujrat High Court (Supra). In that very decision reliance has been placed upon a decision of the Supreme Court reported in 2001 S.C. 2521 Rakesh v. State of Haryana.

8. In paragraph -13 of the above decision of the apex court, it has been held as follows:

13. Word "evidence" occurring in sub-section is used in comprehensive and broad sense which would also include the material collected by the Investigating Officer and the material or evidence which comes before the Court and from which the Court can prima facie conclude that person not arraigned before it is involved in the commission of the crime.

9. This judgment has been rendered by two judges of the Supreme Court. In that very decision. reliance has also been Placed upon Ranjit Singh Vs. State of Punjab,

10. Ranjeet Singh's case (Supra) upon which the petitioner has relied upon, the judgment has been rendered by three judges. In that very decision the reliance

has been placed upon three decisions of the apex court: reported in Raj Kishore Prasad Vs. State of Bihar and another, Kishun Singh and Others Vs. State of Bihar, and Joginder Singh and Another Vs. State of Punjab and Another, In paragraphs 9 10 and 11 of the judgment, it has been held as follows:

9. Now it is well- high settled that "evidence" envisaged in Section 319 of the Code is the evidence tendered during trial of the case if the offence is triable by a Court of Session. The material placed before the committal court cannot be treated as evidence collected during enquiry or trial.

10. In Kishun Singh case the above position though in a different context, has been highlighted through the following observations:

11. On a plain reading of Sub-section (1) of Section 319 there can be no doubt that it must appear from the evidence tendered in the course of any inquiry or trial that any person not being the accused has committed any offence for which he could be tried together with the accused. This, power, it seems clear (to us, can he exercised only if it so appears from the evidence at the trial and not otherwise. Therefore, this sub-section contemplates existence of some evidence appearing in the course of trial wherefrom 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.

11. In fact learned. Judges were reiterating the legal position adumbrated by a three-judge Bench of this Court in Joginder Singh v. State of Punjab.

11. Thus from the above decision, it is quite clear that only evidence recorded during enquiry or trial, matters for application of Section 319 Cr.P.C. for summoning any person as additional accused. The material collected during pre-trial stage is not "evidence" as contemplated u/s 319 Cr.P.C. In view of above principle of law. it is quite clear that the summoning of the petitioner as an additional accused u/s 319 Cr.P.C. on the basis of Material collected during pre-trial stage is bad and illegal.

12. Accordingly, this application is allowed and the impugned order is hereby quashed.