

GAHC010163842019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./816/2019

1. SRI BHARAT CH. HALOI
S/O LATE PROBIN CH. HALOI, R/O PIYOLI PHUKAN NAGAR, P.O.-
BAMUNIMAIDAM, P.S.-CHANDMARI, DIST-KAMRUP(M), ASSAM,
PIN-781021.

VERSUS

1. THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:PABITRA KR. KALITA
ASI OF POLICE
S/O LATE ARJUN KALITA
BHAWANIPUR OUT POST
P.S. AND DIST-BARPETA
ASSA M

Advocate for the Petitioner : MR. T DEURI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT

Date : 25-04-2023

Heard Mr. T. Deuri, learned counsel for the petitioner. Also heard Mr. P.S. Lahkar, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

2. In this petition, under Section 482 of the Code of Criminal Procedure, 1973, the petitioner, namely, Sri Bharat Ch. Haloi has put to challenge the order dated 24.05.2019, passed by the learned Addl. Sessions Judge, Bajalil, in Sessions Case No.43/2018. It is to be noted here that vide the impugned order dated 24.05.2019, the learned Court below has invoked the jurisdiction under Section 319 of the CrPC and taken cognizance of the offence under Sections 489-B/489-C/34 of the IPC, against petitioner Bharat Ch. Haloi in Sessions Case No.43/2018.

3. The factual background of filing of the present petition is briefly stated as under:

“In connection with the GDE No.165, dated 08.07.2016, ASI Pabitra Kumar Kalita of Bhabanipur Police Out Post, along with staff, on 08.07.2016, at about 12:30 P.M., visited Kahara Village and found three boys and two girls, namely, (1) Chandan Kumar Haloi, (2) Rabi Sarma, (3) Dhanjit Barman, (4) Ms. Dolly Gogoi and (5) Ms. Shikha Sarma, being detained by the villagers of Kahara Village with one vehicle bearing Regn. No.AS-01-BT-8292, while they were circulating fake Indian currency note within that locality among the public and shopkeepers and he also recovered 260 numbers of fake Indian currency note of Rs.50/- denomination and also recovered one identity card, one laptop and one Nokia Mobile Handset and 28 numbers of compact disc from the possession of accused Chandan Kumar Haloi and seized the same in presence of the witnesses.”

4. During interrogation, the aforementioned boys and girls disclosed that they were circulating the fake Indian currency notes as genuine within the locality of Kahara area. Then he lodged one FIR with the Officer-in-Charge of Barpeta Police Station, through the In-Charge of Bhabanipur Police Out Post on the same day, on the receipt of which the Barpeta P.S. Case No.1391/2016, under Sections 120(B)/489-B/489-C of the IPC has been registered and entrusted SI Abhijit Kr. Baruah, In-Charge of Bhabanipur Police Out Post to investigate the same.

5. Thereafter, the investigating officer had visited the place of occurrence, examined the witnesses, arrested the accused and forwarded them to the Court and also got the seized notes examined in the FSL and collected the FSL report and after completion of investigation, the investigating officer laid charge sheet against the aforementioned accused persons to stand the trial in the Court, under Sections 120(B)/489-B/489-C of the IPC.

6. Thereafter, the learned Court below has taken cognizance of the offence under Sections 489-B/489-C/34 of the IPC, against the aforementioned accused persons and after hearing both the parties, framed charges against them under the aforesaid Sections of law to which the accused persons pleaded not guilty. Thereafter the prosecution side has examined as many as seven witnesses and vide the impugned order dated 24.05.2019, the learned Court below has invoked the jurisdiction under Section 319 of the CrPC, against the present petitioner Bharat Ch. Haloi who is the owner of the vehicle bearing Regn. No.AS-01-BT-8292.

7. Being highly aggrieved, the petitioner approached this Court by filing the present petition on the ground:

(a) that even if the facts disclosed in the first information report is accepted at its face values, yet no case against the petitioner is made out and as such, the impugned order dated 24.05.2019, passed in Sessions Case No.43/2018, is liable to be set aside.

(b) that the learned Court below has overlooked the fact that the petitioner was not there at the place of occurrence and none of the witnesses examined by the prosecution till date of taking cognizance against him, has made any statement incriminating him.

(c) that the learned Court below has failed to appreciate the fact that evidence, which was brought before the learned Court below does not prima

facie establish the fact that the accused petitioner have committed an offence and for such offence, the petitioner will be tried along with the other accused persons.

(d) that without any sufficient materials against the present petitioner in connection with the present case, the learned Court below, without applying the stringent test, one of which being the evidence on record, as such that would reasonably lead conviction of the accused, sought to be summoned and as such, the impugned order dated 24.05.2019 is liable to be set aside and therefore, contended to allow the petition.

8. Mr. T. Deuri, learned counsel for the petitioner, referring to the evidence of seven witnesses examined by the prosecution, which were being enclosed in the additional affidavit submitted by the petitioner as enclosure E₁-E₇, submits that none of the witnesses has impleaded the present petitioner with the offence alleged in the FIR. However, Mr. Deuri submits that the petitioner is the father of accused Chandan Kumar Haloi and also is the registered owner of the vehicle bearing Regn. No.AS-01-BT-8292, which was seized by the police in connection with the case but no way the petitioner is involved with the alleged offence and as such the learned Court below has wrongly invoked jurisdiction under Section 319 of the Cr.P.C. and taken cognizance of the offence under Sections 489-B/489-C/34 of the IPC, against petitioner and thereby caused prejudice to the petitioner and impleading the petitioner as an accused in the Sessions Case No.43/2018, is an abuse of the process of the Court and therefore, contended to allow the petition by setting aside the aforesaid order.

9. Per contra, Mr. P.S. Lahkar, learned Addl. Public Prosecutor, Assam fairly submits that none of the prosecution witnesses, examined so far by the learned Court below has implicated the present petitioner with the offence alleged. However, Mr. Lahkar pointed out that the petitioner is the registered owner of the vehicle, bearing Regn. No. AS-01-BT-8292, which was seized from the possession of his son Chandan Kumar Haloi, who is an accused of the case. Mr. Lahkar further submits that since the son of the petitioner had

used the vehicle in question while committing the offence, the impugned order dated 24.05.2019, passed by the learned Court below, as such, suffers from no infirmity or illegality requiring any interference of this Court and therefore, it is contended to dismiss the petition.

10. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned Court below and also gone through the additional affidavit filed by the petitioner and the enclosures, enclosed therewith. Also I have carefully gone through the evidence of the seven witnesses examined recorded by the learned Court below which are annexed with the additional affidavit as enclosure E₁ to E₇.

11. Before, we dwell upon the facts and circumstances of the case in hand let us refer to some of the precedents presently occupying the field, which would help us in dealing with the case in hand with greater precision. Hon'ble Supreme Court in **Vikas-vs.-State of Rajasthan in Criminal Appeal No. 1190 of 2013 (arising out of SLP (Crl.) No. 6081 of 2013**, while dealing with the provisions of 319 Cr.P.C. held as under:-

“A Perusal of [Section 319](#) of the Cr.P.C. would clearly indicate that on the objective satisfaction of the court a person may be 'arrested' or 'summoned' as the circumstances of the case may require if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons. The court should exercise judicial discretion on a consideration of the totality of the facts and circumstances of a given case and in a manner where proper procedures are followed that are fundamental to the right of fair trial of the accused”.

12. In **Hardeep Singh-vs- State of Punjab & Ors.**, reported in **(2014) 3 SCC 9**, Hon'ble Supreme Court while dealing with the degree of satisfaction required for invoking power under Section 319 Cr.P.C. held that:-

“Section 319 (1) of the Cr.P.C. empower the Court to proceed against other persons who appear to be guilty of offence, through not an accused before the Court. The word ‘appear’ means clear to the comprehension or a phrase near to, if not synonymous with ‘proved’. It imparts a lesser degree of probability than proof”.

It was further held that-

The power of Section 319 Cr.P.C. is a discretionary and extra ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised and not in a casual and cavalier manner.”

It was also held that-

Only a prima facie case is to be established from the evidence led before the Court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 [Cr.P.C](#), the purpose of providing if ‘it appears from the evidence that any person not being the accused has committed any offence’ is clear from the words “for which such person could be tried together with the accused.” The words used are not ‘for which such person could be convicted’. There is, therefore, no scope for the Court acting under [Section 319](#) Cr.P.C. to form any opinion as to the guilt of the accused.

13. Now, on the touchstone of the principles discussed herein above, an endeavour will be made to test the correctness or otherwise of the impugned order dated 24.05.2019, of the learned court below. Before directing a discussion in this regard, I deem it appropriate to

reproduce the impugned order, dated 24.05.2019, passed by the learned Court below, in Sessions Case No.43/2018, which reads as under:-

“24.05.2019:- Two no. of accused persons are present. The accused Dhanjit Barman is absent with step. Petn. No.462/19 and it is allowed. He is represented on today.

The other accused Dolly Gogoi is under representation by the learned counsel.

The counsel is present. One witness Rakbul Ali is present is examined and is discharged by Hon’ble Court cross by both the parties.

On perusal of the case records it appears that the vehicle No.AS-01-BT-8292 was also directly involved into the incident. But the I/O has not submitted charge sheet against accused.

Hence, the owner of the vehicle Sri Bharat Ch. Haloi is also impleaded as accused of the case under section 319 of the Cr.P.C.

Hence issue summon to the accused Bharat Ch. Haloi as an accused of this case.

Fixed – 26.06.2019 for appearance.

*Sd/- Illegible
Addl. Sessions Judge,
Bajali, Pathsala.”*

14. From a bare perusal of the order impugned, it is not discernible as to what incriminating materials are forthcoming against the present petitioner, which lead the learned court below to implead him as accused here in this case invoking the provision of section 319 Cr.P.C. Indisputably, the petitioner is the registered owner of the vehicle bearing registration No.AS-01-BT-8292, which was seized by the I.O. during investigation. Indisputably also the said vehicle was detained with the son of the petitioner, namely Chandan Kr. Haloi who has been charge sheeted and also standing trial along with other co-accused. But,

there is also no material to show that the son of the petitioner, namely, Chandan Kr. Haloi had used the said vehicle in committing the crime with the knowledge of the petitioner. As held by the Hon'ble Supreme Court in the case of **Hardeep Singh** (supra), the prosecution has to reveal the basic fact to show that the owner had knowingly permitted to other person to use the vehicle, in question, for the purpose of committing the offence. In the case in hand the element of knowingly permitted is conspicuously missing.

15. Thus, it transpires from the above discussion that there was practically no evidence against the petitioner after examination of seven prosecution witnesses, even to make out a prima-facie case, not to speak of much stronger evidence than mere probability to show his complicity, as held by the Hon'ble Supreme Court in the case of **Hardeep Singh (supra)**. Merely, because he is the owner of the vehicle, and in conspicuous absence of materials to show that he had 'knowingly' permitted his son to use the car in question, for committing the crime, to the considered opinion of this court, is not sufficient to invoke the discretionary jurisdiction under section 319 Cr.P.C. The test, which has to be applied, is one which is more than prima facie case. It has also been held in the case of **Hardeep Singh (supra)** that only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised and not in a casual and cavalier manner.

16. It is settled that the provision under Section 319 Cr.P.C. is to be invoked sparingly ensuring that the principles of rule of law and the basic tenets of criminal law jurisprudence are not vitiated. The learned Counsel for the petitioner seems to be absolutely right in his submission that invoking the provision of Section 319 Cr.P.C against the petitioner is unsustainable in law.

17. It is needless to mention here that, the criminal law also derives its source and sustenance from the Constitution. The Constitution, on one hand, guarantees the Right to Life and Liberty to its citizens under [Article 21](#) and on the other hand imposes a duty and an obligation on the Judges while discharging their judicial function to protect and promote the liberty of the citizens. Liberty is the natural and inalienable right of every human being and it is proclaimed by [Article 21](#) of the Constitution that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law and as such, framing of charge against the petitioner, who is cited by the I.O. as prosecution witness and against whom, the four prosecution witnesses have not whispered any word, interferes with the right to life and personal liberty.

18. Thus, having tested the impugned order, dated 24.05.2019, passed by the learned Court below, in Sessions Case No.43/2018, on the touchstone of the principles of law, laid down by the Hon'ble Supreme Court in the case laws discussed herein above, this Court is of the considered opinion that the same failed to withstand the test legality, propriety and correctness. There is no material to show the legally prosecutable culpability of the petitioner, even after examination of seven prosecution witnesses, and the learned Addl. P.P. has fairly conceded to the same. Accordingly, the impugned order dated 24.05.2019, passed by the learned Court below, in Sessions Case No.43/2018, stands set aside and quashed. This revision petition is accordingly disposed of. The parties have to bear their own costs.

JUDGE

Comparing Assistant