

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8270 of 2015

Arising Out of PS.Case No. -31 Year- 2011 Thana -BATH District- BHAGALPUR

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1. Kapildeo Singh S/o Late Parmeshwari Singh
 2. Smt. Anima Devi W/o Sanjeev Singh
 3. Miss Tisku Kumari @ Kalyani Kumari D/o Sanjeev Singh.

All are resident of village - Nayagaon, Police Station - Bath, District-
Bhagalpur.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ram Sevak Choudhary, Advocate

For the Opposite Party/s : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-08-2015

By way of an application under section 482 of the Code of Criminal Procedure (for short “the Code”) the petitioners seek quashing of the order dated 21.1.2015, passed by the learned 6th Additional District and Sessions Judge, Bhagalpur in Sessions Trial No.264 of 2012, whereby the petition filed by the prosecution under section 319 of the Code has been allowed and, accordingly, summonses have been issued against the petitioners to appear before the court.

2. On the basis of fardbeyan of one Ashok Kumar Chaudhary Bath P.S.Case No.31 of 2011 dated 29.7.2011 was



registered against altogether six persons including the three petitioners of the present case under sections 302 and 201 read with 34 of the Indian Penal Code and investigation was taken up. On completion of investigation though the police submitted charge-sheet against some other accused persons, the investigation against these petitioners was kept open. On completing further investigation of the case, the police submitted a supplementary report exonerating the petitioners from all the allegations on 28th September, 2012. The said police report was accepted by the court of Magistrate.

3. Later on, the learned Magistrate took cognizance of the offence against the chargesheeted accused and since the offences alleged were exclusively triable by court of sessions, the learned Magistrate committed the case to the court of sessions for trial. In course of trial, altogether eight witnesses were examined including the doctor and the investigating officer of the case. Thereafter, the prosecution filed an application under section 319 of the Code before the trial court for summoning the petitioners as additional accused.

4. It is contended that the case is based on circumstantial evidence and there is absolutely no material on record to connect the petitioners with the offence in question.



Though the petitioners were named in the first information report, on completion of investigation, the police submitted charge-sheet as against other accused persons but the petitioners were not sent up for trial. Even in course of trial no substantial material came against the petitioners to put them on trial. The court below, however, erroneously summoned the petitioners vide impugned order dated 21.1.2015 as additional accused to face trial.

5. Learned counsel for the State Dr. Mayanand Jha has vehemently opposed the prayer made on behalf of the petitioners. He has submitted that from perusal of the impugned order it would appear that there are *prima facie* materials against the petitioners in the deposition of the witnesses and, therefore, the court below has rightly summoned them to face trial after examination of eight witnesses.

6. In order to appreciate the rival submissions made by the respective counsel for the parties, it is necessary to consider the facts of the case.

7. The prosecution case, in brief, according to the informant, is that in the night of 27.7.2011, at about 9:30 p.m., after having meal his brother Rahul Kumar went out of the house, and at about 10:30. p.m., he was talking to his brother Rajeev Kumar Choudhary near school on mobile, who resides in Delhi.



At that time, Tishu Kumari, daughter of Sanjeev Singh, who is his co-villager called upon Rahul Kumar to her house. In the morning, when brother of the informant did not return back then he went to enquire to the house of Sanjeev Singh. He informed that his brother was no more and asked him to go and search his brother. On 28.7.2011, he came to know that a dead body of an unidentified person is lying near Mainmadih Halkara Chak Mor. At about 8:00 p.m., he went there and saw the dead body and identified the same to be of his deceased brother Rahul Kumar. He further alleged that the daughter of Sanjeev Singh used to call Rahul Kumar frequently on phone, which fact was brought to the notice of Sanjeev Singh earlier. He has further alleged that Sanjeev Singh, Sujeet Singh, Ajit Singh, Kapildeo Singh, Anima Kumari and Tishu Kumari conspired together, and killed his brother Rahul Kumar by sharp cutting weapon after calling him to their house, and damped the dead body in the orchard of Abhiram Singh situated near Mainmadih Halkara Chak More.

8. I have heard respective counsel for the parties and perused the record. From perusal of the order dated 21.1.2015, it would appear that the trial court has summoned the petitioners on the ground that there appears to be *prima facie* evidence against them. The operative part of the impugned order passed by the

court below reads as under :

“Considering the argument of the learned counsels after perusal of the evidence of the witnesses it appears to me that prima facie materials are available in the deposition of witnesses to summon Kapildev Singh, Anima Debi and Tisu Kumari alias Kalyani Kumari. It is, therefore, directed that summons be issued to these persons to appear in the court to face the trial. As such petition u/s 319 Cr.P.C. is hereby allowed.”

9. It is well settled that power of summoning under section 319 of the Code is not to be exercised in a routine and mechanical manner. It is to be invoked when on consideration of all materials available on record, the court feels necessity of impleading some persons as accused. It is true that such power can be exercised at any stage of the case but the stage of summoning a person under section 190 of the Code or section 193 of the Code is quite different from summoning a person under the provision of section 319 of the Code. At the stage of taking cognizance of the offence, the only thing to be seen is whether or not a prima facie case is made out, but the power of summoning under section 319 of the Code is to be invoked when on consideration of all the materials available on record, the court

feels impleading some persons as accused. Since the power conferred under section 319 of the Code is extraordinary in nature, it should be used with caution and only if compelling reasons exist.

10. In the present case, though the petitioners were named in the FIR, they were not sent up for trial. The court of Magistrate accepted the final report submitted by the police. Apparently, the case is based on circumstantial evidence and the court below has not assigned any compelling reason for summoning the petitioners.

11. A Constitution Bench of the Supreme Court of India in *Hardeep Singh and others vs. State of Punjab and others*, [(2014) 3 SCC 92], clarified the powers of the Courts under the criminal justice system to arraign any person as an accused during course of inquiry and the trial as contemplated under section 319 of the Code. The Court concluded that a person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under section 319 of the Code provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned, the requirement of sections 300

and 398 of the Code has to be complied with before he can be summoned afresh.

12. The Constitution Bench further held that though under section 319(4)(b) of the Code, the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under section 319 of the Code would be the same as for framing of charge. The degree of satisfaction for summoning the accused (original and subsequent) has to be different.

13. Keeping in mind the statutory provision and the law laid down by the Constitution Bench of the Supreme Court, the impugned order dated 21.1.2015 passed by the learned 6th Additional District & Sessions Judge, Bhagalpur cannot be sustained, as the summoning order has been passed merely on the ground that there appears to be prima facie material against the petitioners in deposition of witnesses examined during trial. Such satisfaction on the part of the trial court for summoning the petitioners was certainly not in consonance with the mandate of law.

14. Accordingly, the aforesaid order is set aside. The matter is remitted back to the trial court to consider the evidence



on record and pass an appropriate order, in accordance with law in the light of observations made hereinabove.

15. With these observations, the application is allowed.

(Ashwani Kumar Singh, J)

Md.S./-

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