

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39422 of 2012

Arising Out of PS.Case No. -45 Year- 2006 Thana –Supaul District- SUPAUL

1. Ram Narain Mehta @ Narain Mehta

2. Naresh Mehta

3. Manoj Kumar Mehta

Sl. No.1 to 3 are sons of Chhotakan Mehta

4. Chhotakan Mehta S/O Baldeo Mehta,

5. Indra Devi W/O Ram Narain Mehta,

All Resident of Village Lata Raha, P.S. Supaul, District -Supaul.

.... Petitioner/s

Versus

1. The State of Bihar

2. Dhamendra K. Mehta, S/o Late Tapeshwari Mehta, resident of village-Latraha
(Lokha O.P) District-Supaul.

.... Opposite Party/s

Appearance :

For the Petitioners : Mr. Praveen Kumar Agrawal, Advocate

For the Opposite Party no.1 : Mr. Parmanand Prasad, A.P.P.

For the opposite party no.2 : Mr. Sunil Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 23-04-2015

The petitioners challenge the order dated 17.08.2012 passed by the Court of learned *Adhoc* Additional Sessions Judge-1, Supaul in Sessions Trial No.361 of 2006/398 of 2006. The trial Court directed issuance of summons to the petitioners at the request of the Public Prosecutor.

The facts, in brief, are as under:

Supaul P.S. Case No.45 of 2006 was registered against several persons on a complaint submitted alleging offences punishable under Section 147, 148, 149, 307 and 302 of the Indian Penal Code. Initially, the police filed a final report against five



accused. This was followed by a final report against another person duly mentioning that the investigation is incomplete. The Judicial Magistrate took cognizance of the offence against six accused mentioned in the final reports and made over the case to the Sessions Court and it was taken as Sessions Trial No.361 of 2006/398 of 2006.

In course of trial, five witnesses were examined. At that stage, the Public Prosecutor filed an application under Section 319 of the Code of Criminal Procedure (for short, 'the Code') stating that the evidence on record discloses the involvement of the petitioners herein also, and, accordingly, made a request to issue summons. The trial Court has issued summons through the order under challenge. Hence, this petition.

Heard Sri Praveen Kumar Agrawal, learned counsel for the petitioners, Sri Parmanand Prasad, learned Additional Public Prosecutor for the opposite party no.1, and Sri Sunil Kumar Singh, learned counsel for the opposite party no.2.

The first contention advanced by the learned counsel for the petitioners is that since the petitioners were already shown as accused in the F.I.R., no summons can be issued to them under Section 319 of the Code. Reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of *Sohan Lal & others Vs.*



*State of Rajasthan*¹. That was a case in which two persons, who were already discharged by the trial Court after the framing of charges, were sought to be proceeded against, in exercise of power under Section 319 of the Code. It was held that once a person has been discharged of the charge, he cannot be shown as accused once again in exercise of power under Section 319 of the Code. In the instant case, the petitioners were not charged at all, much less they were discharged.

Another decision cited by the learned counsel for the petitioner is the one, in *Michael Machado and another Vs. Central Bureau of Investigation and another* ². Their Lordships held that whenever a person is added as accused under Section 319 of the Code, the procedure prescribed, particularly one under sub-Section (4) of Section 340 of the Code must be followed. That stage has yet to come in this case.

Though it is alleged that at one stage, the petitioners filed a protest petition before the Sub-Divisional Judicial Magistrate, that hardly makes any difference, in the context of exercise of power under Section 319 of the Code by the Sessions Court.

The petition is, accordingly, dismissed.

¹ 1990 Supreme Court Cases (Cri) 650

² 2000 Supreme Court Cases (Cri) 609

Interlocutory application, if any, shall stand disposed
of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

AFR

Sunil/-

U		T	
---	--	---	--