

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.235 of 2015

Arising Out of PS.Case No. -31 Year- 2006 Thana -DHANSOI District- BUXAR

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1. Ramadhar Singh @ Ramadhar Yadav, Son of Late Baliram Yadav

2. Sheshnath Singh @ Sheshnath Yadav

3. Sidhnath Singh @ Sindhu Yadav

Both sons of Lalan Yadav

4. Pramod Singh @ Pramod Yadav

5. Mithilesh Singh @ Mithilesh Yadav

Both Sons of Ramyash Yadav

6. Mangaru Yadav, Son of Late Ramnaresh Yadav

7. Sudama Singh @ Sudama Yadav, Son of Sushil Yadav

8. Rajendra Singh @ Rajendra Yadav, Son of Late Hori Yadav,

All resident of Village - Khoraittha, P.S. Dhansoi, District - Buxar.

.... Petitioners

Versus

The State of Bihar.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Satyapal Singh, Advocate

For the Opposite Party/s : Mr. Aditya Narayan Singh-1, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-08-2015

In the instant application filed under Section 482 of the Code of Criminal Procedure (For short 'the Code'), the petitioners seek quashing of the order dated 29.06.2011 passed by the learned Additional District & Sessions Judge, F.T.C.-I, Buxar in Session Trial No. 218 of 2008 arising out of Dhansoi P.S. Case No. 31 of

2006 summoning the petitioners as additional accused under Section 319 of the Code.

2. The admitted facts of the case are as follows:-

(a) On the basis of fardbeyan of one Mangla Rai, Dhansoi P.S. Case No. 31 of 2006 was instituted on 18th July, 2006 under Section 302 /34 of the Indian penal Code and 27 of the Arms Act against 8-10 unknown accused persons.

(b) According to the informant his wife Dewanti Devi was shot dead by miscreants on 17th July, 2006 in the night at about 8:00 p.m. while she had gone to attend the call of nature.

(c) On completion of investigation the police submitted charge sheet under Section 173(2) of the Code against one Nagendra Rai, nephew of the informant, who faced charges under Sections 302 read with 34 of the Indian Penal Code and 27 of the Arms Act.

(d) During trial 11 witnesses were examined on behalf of the prosecution.

(e) On 16th January, 2010, after taking the evidence for the prosecution, examining the accused under Section 313 of the Code and hearing the prosecution and defence, the trial court acquitted the accused Nagendra Rai under Section 232 of the Code.

(f) After pronouncing the judgment of acquittal, the trial court entertained an application filed on behalf of the prosecution under Section 319 of the Code on 16th January, 2010 itself and adjourned the same for

hearing and order.

(g) On 29th June, 2011, the trial court summoned the petitioners as accused under Section 319 of the Code.

3. Mr. Satyapal Singh, learned counsel for the petitioners has submitted that an order under Section 319 of the Code can be passed at any time after the charge-sheet is filed and before the pronouncement of judgment.

4. He has submitted that once the judgment is pronounced, the trial comes to an end and the court has no jurisdiction to summon an additional accused under Section 319 of the Code. He has further submitted that it would be evident from the record that on 16th January, 2010 the trial court acquitted the sole accused Nagendra Rai and, thereafter, the prosecution filed an application under Section 319 of the Code which was retained in the file for hearing and orders. Thereafter, the trial court summoned the petitioners vide impugned order dated 29.06.2011 i.e. after almost 18 months of the pronouncement of judgment in Session Trial No. 218 of 2008.

5. On the other hand, Mr. Aditya Narayan Singh, learned Additional Public Prosecutor has submitted that the application for summoning the petitioners under Section 319 of the Code was filed by the prosecutor on the date of judgment itself i.e.



on 16th January, 2010. However, the learned Additional District & Sessions Judge, FTC-1st, Buxar adjourned the matter for hearing and orders and, thereafter, decided the same vide impugned order dated 29th June, 2011. He has submitted that the delay caused in deciding the application by the Court cannot be a ground for setting aside the order. He has stated that though the witnesses examined during trial exonerated the accused facing the trial, sufficient evidence has come against the petitioners to put them on trial and, therefore, it is necessary in the ends of justice to put them on trial.

6. I have heard learned counsel for the parties and carefully examined the record.

7. It is an admitted fact that the impugned order dated 29th June, 2011 whereby the petitioners have been summoned as an additional accused has been passed long after pronouncement of the judgment in Sessions Trial No. 218 of 2008.

8. In the present case, this Court would be required to examine the only question as to whether an order under Section 319 of the Code could have been passed by trial court after pronouncing the judgment in the Sessions trial pending before it.

9. In order to examine the issue involved in the present case, I deem it necessary to reproduced section 319 of the Code which reads as under:-



“319. Power to proceed against other persons appearing to be guilty of offence.- (1) Where, **in the course of any inquiry into, or trial of, an offence**, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then –

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

(Emphasis supplied)

10. The words “in course of any inquiry into, or trial of, an offence” occurring in Section 319(1) of the Code clearly indicate that the powers conferred under Section 319 of the Code can be

exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced is going on. It covers the period of pre-trial and the trial stage.

11. It is well settled that in a case of trial before the Session Court, the trial commences when the accused is charged under Section 228 of the Code. Further, in a case arising out of an FIR, the Court reaches the stage of inquiry after filing of charge-sheet and as soon as the Court frames charges, the trial commences and, therefore, the power under Section 319(1) of the Code can be exercised at any time after the charge-sheet is filed and before pronouncement of judgment, except during the stage of Sections 207 and 208 of the Code, committal etc. which is only pre-trial stage intended to bring the process into motion.

12. At this stage, it would be relevant to examine the provision prescribed under the Code which deals with judgment. Section 353(1) of the Code speaks about judgment which reads as under:-

“353(1).The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after **the termination of the trial or at some subsequent time** of which notice shall be given to the parties or their pleaders,-

(a) by delivering the whole of the judgment; or

- (b) by reading out the whole of the judgment; or
- (c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(Emphasis supplied)

13. The words “termination of trial or at subsequent time” occurring in Section 353(1) of the Code clearly indicate that the judgment comes on termination of trial, or immediately after termination of the trial or at some subsequent time on which the case is posted for judgment. Therefore, when the case is posted for judgment, the trial stands terminated.

14. Keeping in view the relevant provisions of the Code, there is not an iota of doubt in my mind that once the court had pronounced its judgment after a lawful hearing, it was *functus officio* and could not have reopened the case. As a matter of fact, to promote finality of judicial decisions, which would otherwise be subject to application to reopen the case by the aggrieved party, once a judgment is pronounced, the Judge loses authority to further rule on it.

15. In the present case, the sole accused facing trial was acquitted vide judgment pronounced on 16th January, 2010. The subsequent summoning order under Section 319(1) of the Code

passed on 29.06.2011 by the trial Judge was certainly without jurisdiction as he had become *functus officio*, and he could not have reopened the case for the purpose of summoning the petitioners as accused under Section 319 of the Code.

16. In view of the discussions made hereinabove, the impugned order dated 29.06.2011 passed by the learned Additional District & Sessions Judge, F.T.C.-I, Buxar in Session Trial No. 218 of 2008 arising out of Dhansoi P.S. Case No. 31 of 2006 summoning the petitioners under Section 319 of the Code cannot be sustained. Accordingly, the same is set aside.

The application stands allowed.

(Ashwani Kumar Singh, J.)

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