

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 44868 of 2013

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1. Manish Kumar Pandey son of Laxmi Nidhi Pandey
2. Laxmi Nidhi Pandey son of Sitaram Pandey
3. Amita Devi wife of Laxmi Nidhi Pandey
(All are residents of Baikatpur (Baikunthpur), P.S.- Khusrupur, District- Patna)

.... Petitioners

Versus

1. The State of Bihar
2. Suman Kumari Pandey, daughter of Late Sahjanand Pandey, resident of Village- Bakhtiyarpur, P.S.- Bakhtiyarpur, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar, Adv.
For the Opposite Party/s : Mr. Satyendra Nr. Singh, A.P.P.
Mr. Shailendra Kr. Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 18-08-2016

Heard Sri Ajit Kumar, learned counsel for petitioners, Sri Satyendra Narain Singh, learned Addl. Public Prosecutor as well as Sri Shailendra Kumar Jha, learned counsel, who has appeared on behalf of complainant/opposite party no. 2.

2. Three petitioners have approached this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure (in short "Cr.P.C."), with a prayer to quash an order dated 03-09-2013 passed by learned Additional Sessions Judge – 1st, Barh (hereinafter referred to as 'Addl. Sessions Judge') in Sessions Trial No. 1661 of 2007 (arising out of Complaint Case No. 71C of 2006). By the said order, the petition filed on behalf of

petitioners under Section 227 of the Cr.P.C., pursuant to order dated 06-10-2010 passed in Cr. Misc. No. 13130 of 2009, was dismissed by the learned Addl. Sessions Judge.

3. Without going into the details of the case, keeping in view the fact that order impugned is being assailed on technicality, the Court proposes not to discuss the fact in detail. However, fact remains that initially a compliant was filed by opposite party no. 2, vide Complaint Case No. 71C of 2006 arraying three petitioners alongwith other nine persons, as accused for commission of offence under Sections 498(A), 420, 406, 347, 386, 379, 376, 34 of the Indian Penal Code (in short "IPC") and Sections 3 & 4 of the Dowry Prohibition Act, 1961. After conducting an inquiry, the learned Sub Divisional Judicial Magistrate, Barh (hereinafter referred to as the 'Magistrate'), by its order dated 01-08-2006, took cognizance of offence under Section 376 of the IPC only against one accused namely Rajnish Kumar Pandey, who was arrayed, as accused no. 2, in the complaint petition. Since the offence was triable by the court of sessions, the case was committed to the court of sessions and during trial, after examination of some of the witnesses, on the ground that materials were collected against the petitioners also, the learned Addl. Sessions Judge summoned other accused persons, including aforesaid three petitioners, to face trial. The order was

passed under Section 319 of the Cr.P.C.

4. The petitioners, being aggrieved with the order summoning them, earlier approached this Court by filing a quashing application, vide Cr. Misc. No. 13130 of 2009, which was dismissed as withdrawn, on the prayer made by learned counsel for petitioners to agitate all the points before the court below at appropriate stage. Accordingly, before the learned Addl. Sessions Judge, petitioners filed a petition under Section 227 of the Cr.P.C. for their discharge, which has been rejected by the impugned order i.e. order dated 03-09-2013.

5. Sri Ajit Kumar, learned counsel for petitioners, while assailing the impugned order, submits that once the petitioners were arrayed as accused in the complaint petition and after detailed inquiry, petitioners were exonerated and cognizance order was passed only against one accused, the petitioners being accused in complaint case were not required to be summoned under Section 319 of the Cr.P.C. He submits that under Section 319 of the Cr.P.C., only those persons can be summoned to face trial, who were earlier not accused. He highlighted the provisions contained in Section 319 of the Cr.P.C. Besides this, he has placed reliance on an order passed by this Court reported in **2010 (2) PCCR (PHC) 403 (Chandra Kala Devi vs. State of Bihar)**. He has also placed reliance on **2004 (2)**



P.L.J.R. 225 (Rama Devi vs. State of Bihar). He submits that ofcourse, summoning order was assailed by the petitioners before this Court, but this Court had permitted the petitioners to raise all the points at the stage of charge. Accordingly, while filing discharge petition, petitioners had taken the same plea that petitioners were not required to be summoned, even then, the learned Addl. Sessions Judge, without taking note of the discharge petition, has rejected the prayer of the petitioners by the impugned order.

6. Learned Addl. Public Prosecutor as well as Sri Shailendra Kumar Jha, learned counsel for the complainant/opposite party no. 2 have vehemently opposed the prayer of the petitioners, however; they were not in a position to dispute the legal proposition.

7. Besides hearing, I have also perused the materials on record, particularly the impugned order. On perusal of **Annexure - 2** i.e. copy of the complaint petition, it is evident that petitioner no. 1 was arrayed as accused no. 1, petitioner no. 2 was arrayed as accused no. 3 and similarly, petitioner no. 3 was arrayed as accused no. 4 in the complaint case no. 71C of 2006. After inquiry, the learned Magistrate had taken cognizance of offence, vide **Annexure - 3** to the petition i.e. order dated 01-08-2006. Cognizance order was passed for offence under Section 376 of the IPC against only one



accused i.e. Rajnish Kumar Pandey, who was arrayed as accused no. 2 in the complaint petition. Meaning thereby that other accused persons were exonerated after thorough inquiry. Once the petitioners were made accused in the complaint case and after inquiry, they were exonerated earlier, then being accused, the petitioners were not required to be summoned under Section 319 of the Cr.P.C. At this juncture, it would be appropriate to quote Section 319 of the Cr.P.C., which is as follows:-

“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 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.”

8. On bare perusal of the aforesaid provisions, it is evident that only those persons can be summoned, who were not accused. On this very issue, the Apex Court in **Rama Devi's case** (*supra*) has already held that power under Section 319 of the Cr.P.C. is not available for summoning a person, who was already an accused. Relying on **Rama Devi's case** (*supra*), this Court itself had quashed the order of summoning in **Chandra Kala Devi's case** (*supra*).

9. In view of the fact that petitioners were accused and they were subsequently summoned under Section 319 of the Cr.P.C. and the fact that petitioners had taken the said plea in petition filed for discharge under Section 227 of the Cr.P.C., the Court is of the considered opinion that learned Addl. Sessions Judge, while dismissing the petition for discharge, has committed serious error.

10. Accordingly, the order impugned i.e. order dated 03-09-2013 passed by learned Additional Sessions Judge – 1st, Barh in Sessions Trial No. 1661 of 2007 (arising out of Complaint Case No.

71C of 2006) so far as petitioners is concerned is, hereby, set aside.

The proceeding against petitioners in S. Tr. No. 1661 of 2007 is set aside.

11. The petition stands allowed.

(Rakesh Kumar, J.)

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