

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.815 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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Mamun Mian son of Late Habib Mian, resident of village- Pahari Manjhawa, P.S.-
Chautarwa, District - West Champaran Petitioner/s

Versus

The State of Bihar Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Sinha No.2, Advocate

For the Respondent/s : Mr. Ahmad Ali, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 17-09-2016

Let defect no.14(1) as pointed out by the stamp reporter be ignored.

Learned counsel for the petitioner is permitted to remove defect no.14(2) as pointed out by the stamp reporter in the course of the day.

The petitioner is named accused in Chautarwa P.S. Case No.106 of 2003 dated 17.11.2003 registered under Sections 302, 324, 307, 324, 307 and 323/34 of the Indian Penal Code and 27 of the Arms Act.

2. According to the First Information Report it was the petitioner, who opened fire causing injury to one Suja Alam as a result of which he died on the spot. Apart from the petitioner, six other persons including one Nabi Alam were made accused in the FIR. On completion of investigation, the police found the accusation against the petitioner and six others to be true and a report under Section



173(2) of the Code of Criminal Procedure (for short 'CrPC') has submitted against them. Thereafter, the jurisdictional Magistrate took cognizance of the offence and committed the case to the court of sessions for trial. In course of trial, altogether ten witnesses were examined on behalf of the prosecution. The prosecution case was closed and the statements of the accused persons were recorded under Section 313 of the CrPC. Thereafter, the case was posted for examination of defence witnesses. The defence has also examined some witnesses during trial in support of its case and the defence case has also been closed. At this stage, an application under Section 319 of the CrPC was filed by the petitioner for summoning one Zakir Mian as an additional accused, as P.Ws. 8 and 10 and some defence witnesses had taken his name as the person who had opened fire causing injury to the deceased.

3. The trial court has rejected the application of the petitioner vide order dated 11.7.2016 passed in Sessions Trial No.205 of 2006 arising out of the Chautarwa P.S.Case No. 106 of 2003. The aforesaid order dated 11.7.2016 passed by the trial court has been challenged by the petitioner by filing the present application under Sections 397 and 401 of the CrPC.

4. Learned counsel for the petitioner has submitted that by not summoning Zakir Mian as an additional accused, the trial court has erred both on law and on facts. He has submitted that P.Ws.8 and

10 have specifically stated during trial that it was Zakir Mian and not the petitioner who had opened fire. The contention of the two prosecution witnesses was also supported by the defence witnesses examined during trial. The impugned order makes it clear that P.W.8 is father-in-law of Nabi Alam and at a very belated stage he has tried to make out a new story to the prosecution case.

5. On the other hand, learned counsel for the State has submitted that the petitioner had filed the application before the court below at the fag end of the trial just in order to delay and derail the prosecution case. He has submitted that an accused can certainly take a plea of innocence, but he cannot direct the court to summon other persons as an additional accused.

6. I have heard learned counsel for the petitioner, learned counsel for the State and perused the record.

7. At this stage, I think it proper to re-produce the findings of the trial court, which read as under:

“It has been submitted on behalf of the petitioner that as per the ruling of the Apex Court reported in A.I.R. 2006(S.C.) 1892-1895 and A.I.R.2014(S.C.)1400 petition of the petitioner u/s 319 Cr.P.C. is maintainable though they are accused in this case.

After hearing and submission of both parties, it is clear that according to prosecution case Mamun Mian opened fire on

Suja Mian and almost all the P.Ws. except P.W.8 and P.W.10 have deposed in support of the prosecution case as contained in the F.I.R. It also clear that P.W.8 is father-in-law of accused Navi Alam. D.Ws. are the witnesses who were cited in the case diary but in examination by the prosecution as witnesses of this case.

In the Judgment of the Apex Court reported in A.I.R. 2014 S.C.1426-1430 it is clearly decided that the court must be very cautious at the time of exercise order u/s 319 Cr.P.C. and this should be exercised very sparingly. It is clear that the defence wants to give a different mode to the prosecution case and bounse to prove a fact that Zakir Mian killed Suja Mian and not Mamun Mian. This fact is totally against the prosecution case and if such prayer will be allowed the present prosecution case will be completely demolish because in one case two version will come which will be a very different situation for the court. In view of the above discussions I am not inclined to allow the prayer of accused persons u/s 319 Cr.P.C. It will be given a suicidal of the prosecution case as stated in the FIR. Accordingly, the application u/s 319 Cr.P.C. is hereby dismissed.”

8. Having seen the findings of the trial court, it would be

proper to refer Section 319 of the CrPC, 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 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.”



9. In view of Sub Section (1) of Section 319 of the CrPC, it would be evident that a person can be summoned under this Section if the evidence collected in course of any inquiry into, or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. The language used in Sub Section (1) of Section 319 of the CrPC would further make it evident that it is not mandatory for the court to proceed against a person against whom some evidence have come in course of trial.

10. The trial court has rightly referred to the judgment of the Supreme Court in the matter of **Hardeep Singh vs. State of Punjab** reported in (2014) 3 SCC 92 wherein it has been held that the court must be very cautious at the time of exercise of power under Section 319 CrPC and this power should be exercised very carefully. The Bench has further held that there must exist compelling circumstances to exercise power under Section 319 CrPC. The Bench has further held that the court should keep in mind that the witness when giving evidence against a person is not doing so merely to seek revenge or is naming him at the behest of some one or for such extraneous consideration. The Court has to be circumspect treating such evidence and try to separate chaff from the grain.

11. In case of **Hardeep Singh vs. State of Punjab and Others** (supra) the Constitution Bench of the Hon'ble Supreme Court



examined the ambit and scope of Section 319 of the CrPC. The Bench while interpreting Section 319(4)(b) of the CrPC has held that degree of satisfaction that will be required for summoning a person under Section 319 of the CrPC would be the same as for framing of a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that the materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of trial. Therefore, the degree of satisfaction for summoning the accused (original or subsequent) has to be different.

12. Keeping in mind the ambit and scope of Section 319 of the CrPC as pointed out by the Constitution Bench of the Hon'ble Supreme Court in the case of **Hardeep Singh vs. State of Punjab and Others** (supra) if the trial court has come to a conclusion that there is no compelling circumstance to exercise such power, no fault can be found.

13. It would be evident from the record of the case that the evidences on behalf of the prosecution and the defence have already been closed. At this stage, an accused, who is undergoing trial, has filed the application for summoning one Zakir Mian as an additional accused and the trial court has expressed its opinion that name of

Zakir Mian has been given by some witnesses including the father-in-law of the petitioner at the fag end of the trial in order to derail the entire prosecution case. In that view of the matter, this Court is of the opinion that the trial court has rightly exercised its discretion and rejected the application filed on behalf of the petitioner as a *de novo* trial at this stage would have further delayed the outcome of trial.

14. Accordingly, the application, being devoid of any merit, is hereby dismissed.

15. The learned Additional Sessions Judge-1, Bagaha is directed to conclude the hearing of the argument on behalf of the parties and deliver the judgment as early as possible preferably within a period of one month from the date of receipt/production of a copy of this order.

Md.S./-

(Ashwani Kumar Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.9.2016
Transmission Date	22.9.2016