

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34225 of 2015

Arising Out of PS.Case No. -23 Year- 2009 Thana -KOPA District- SARAN

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Keshri Nandan Singh S/o late Thakur Singh R/o Village Rewari, P.S. Kopa, District Saran.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Vipin Kumar, Advocate

For the Opposite Party/s : Dr. M. K. Gautam, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-01-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (For Short “CrPC”), the petitioner seeks quashing of the order dated 30.04.2015 passed in Sessions Trial No. 334 of 2010 arising out of Kopa P. S. Case No. 23 of 2009 by the learned Additional District & Sessions Judge, V, Saran, Chapra, whereby the petitioner has been summoned as an additional accused to face trial in exercise of power conferred under Section 319 CrPC.

2. The facts of the case are as under:-

(a) On 14th April 2009, while the informant of the case was busy in clearing the passage near his boundrywall, the accused persons including the petitioner



attacked upon him and upon the order of the petitioner, co-accused Munmun Singh assaulted upon him with *garasa* as a result of which he sustained injuries on his person. When his brother Baleshwar Singh came in rescue, accused Tej Pratap Singh and Chitaranjan Singh assaulted upon him with *farsa* as a result of which he also sustained several injuries on his person. One of the accused, namely, Prem Singh is also alleged to have assaulted with *lathi* upon the two brothers of the informant Gajendra Singh. On hue and cry being raised, some neighbours came and rescued the victims from further assault.

(b) On the basis of the aforesaid written information given by the informant Ganjendra Singh, Kopa P. S. Case No. 23 of 2009, was registered under Sections 147, 148, 149, 323, 324, 447, 504 and 307 of the Indian Penal Code against the petitioner and four others.

(c) On completion of investigation, the police submitted report under Section 173(2) CrPC vide charge-sheet no. 31 of 2009 dated 11.06.2009 against three persons and investigation was kept pending against the petitioner and one Tej Pratap Singh. Subsequently, a

supplementary police report under Section 173(2) CrPC was submitted vide charge-sheet no. 44 of 2010 dated 30.06.2010 against the accused Tej Pratap Singh. In the said report the petitioner was found to be innocent and hence, he was not sent up for trial.

(d) On receipt of the supplementary police report, the learned Chief Judicial Magistrate took cognizance of the offence on 14.09.2010 against the accused Tej Pratap Singh, but no order was passed in respect of the petitioner Keshri Nandan Singh. The said order dated 14.09.2010 was challenged by the informant in revision before the Sessions Court and the revisional Court set aside the order dated 14.09.2010 vide order dated 11.03.2011 and remitted back the matter to the learned Chief Judicial Magistrate to pass order afresh.

(e) In view of the order dated 11.3.2011 passed by the revisional Court, the learned Chief Judicial Magistrate passed the order afresh and took cognizance of the offence vide order dated 27.04.2011 against the accused Tej Pratap Singh and discharged the petitioner.

(f) Thereafter, the order dated 27.04.2011, whereby the petitioner Keshri Nandan singh was discharged, was

challenged in revision before the Sessions Court vide Cr. Misc. No. 121 of 2011, but the same was also dismissed vide order dated 17.03.2012.

(g) Subsequently, charges were framed. In course of trial of accused Chitaranjan Singh, Munmun Singh and Vishwaranjan Singh, who were already sent up for trial in the first report submitted under Section 173(2) CrPC, five witnesses were examined and out of five witnesses, Kameshwar Singh, Gajendra Singh, Styendra Singh and Balehswar Singh stated in their evidence that the petitioner was one of the active participants in the alleged occurrence.

(h) After examination of the five witnesses, an application under Section 319 CrPC was filed on behalf of the prosecution for summoning the accused as an additional accused as all the witnesses had stated in their deposition that the petitioner was one of the accused persons involved in the offence in which four persons had sustained injuries.

(i) After hearing the parties, the learned 5th Additional District & Sessions Judge, Saran at Chapra vide his order dated 30.04.2015 allowed the application

filed on behalf of the prosecution and summoned the petitioner as an additional accused under Section 319 CrPC.

3. The aforesaid order dated 30.04.2015 is under challenge in the present case before this Court.

4. It has been submitted by the learned counsel for the petitioner that since the petitioner was one of the named accused in the FIR and on completion of investigation, the police had submitted final report against him and the learned Magistrate had also accepted the final report submitted by the police, summoning of the petitioner as an additional accused in exercise of power conferred under Section 319 CrPC is bad in the eyes of law. He has further submitted that on the date of occurrence, the petitioner was not present at the place of occurrence. His plea of *alibi* was examined by the police during investigation and the police had found the plea of *abili* to be true. He has also contended that the provision prescribed under Section 319 CrPC itself would make it evident that only the person who has not been made accused in a case, can be summoned in exercise of power conferred under Section 319 CrPC. According to him, since the petitioner was already made accused in the FIR and was discharged by the learned Chief Judicial Magistrate on receipt of the police report, the trial

court could not have summoned him in exercise of power under Section 319 CrPC.

5. In my view, the contention of the petitioner is misconceived. Recently, a Constitution Bench of the Hon'ble Supreme Court in the matter of **Hardeep Singh and others vs. State of Punjab and others** reported in (2014) 3 SCC 92, has clarified the powers of the Court under the criminal justice system to summon any person as an additional accused during course of inquiry or trial as contemplated under Section 319 CrPC. The Bench has held that a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person, who has been discharged can be summoned under Section 319 CrPC, provided from the evidence, it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused, who has been discharged, is concerned, the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh.

6. In view of the law laid down by the Constitution Bench of the Hon'ble Supreme Court in the matter of **Hardeep Singh** (supra), in my opinion, there was no fetter on the power of the Court to summon a person who had not been sent up for trial by the police and in whose case the police report had been accepted by

the Court. Insofar as the other materials are concerned, it would be evident from the impugned order that all the independent witnesses examined during the trial were injured witnesses and they all have named the petitioner as one of the persons involved in the crime in which the informant and three others had sustained grievous injuries.

7. In that view of the matter, no illegality can be found in the impugned order passed by the Court below, whereby the petitioner has been summoned to face trial as an additional accused in exercise of power conferred under Section 319 CrPC.

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

(Ashwani Kumar Singh, J.)

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