

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16962 of 2017

Arising Out of PS.Case No. -51 Year- 2005 Thana -BHAWANIPUR District- PURNIA

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1. Bima Bharti wife of Awadhesh Mandal resident of village Bhatta P.S. Bhawanipur District Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Smt Sonia Devi wife of Late Chanchal Paswan resident of village Bari Dumra BMP Tola Akbarpur O.P., P.S. Bhawanipur District Purnea.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vindhya Keshri Kumar, Sr. Adv.

: Mr. Ram Pravesh Kumar, Adv.

For the Opposite Party/s : Mr. Shyameshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-08-2017

By order dated 04.02.2017 passed by the learned 5th

Additional Sessions Judge, Purnea, the petitioner has been summoned as an additional accused under Section 319 of the Code of Criminal Procedure (for short 'Cr.P.C.) in Bhawanipur (Akbarpur) P.S.Case No. 51 of 2005 corresponding to S.T. No. 1006 of 2010 wherein charges for the offences inter alia under Section 302 and 120-B of the Indian Penal Code (for short 'IPC') and Section 27 of the Arms Act have been framed.

2. The aforesaid order dated 04.02.2017 was passed by the trial court on an application dated 08.03.2016 filed by the informant Sonia Devi under Section 319 of the Cr.P.C.



3. The First Information Report of Bhawanipur (Akbarpur) P.S.Case No. 51 of 2005 is based on the fardbeyan of Sonia Devi wife of one Chanchal Paswan of village Bari Dumra BMP Tola Akbarpur, which was recorded by the Assistant Sub-Inspector of Police Rama Shankar Singh of Akbarpur O.P. at 4.00 p.m. at Bari Dumra BMP Tola, Bhawanipur.

4. In her fardbeyan, the informant has stated that on 06.05.2005, at about 9.00 a.m., her husband was taking meal on the verandah of the house. On the shouting of "*Bachao*" "*Bachao*", she came out of her house and, along with her, her small son and daughter also came out. She saw that on the exhortion of the petitioner, an Ex-MLA, the miscreants, namely, (1) Amod Mandal, (2) O.P. Mandal, (3) Sikandar Mandal, (4) Khokhwa Mandal, (5) Chhotka Awadh Mandal, (6) Motka Awadh Mandal, (7) Vijay Mandal, (8) Mahavir Mandal, (9) Shankar Mandal along with 2-3 others in the police dress killed her husband. The motive behind the occurrence, as alleged in the FIR, is that the husband of the informant was made accused in a case of abduction of father-in-law and mother-in-law of the petitioner. It is also stated by the informant in the FIR that only few days ago the petitioner had threatened the informant that she would not spare her husband and get him killed.

5. The FIR was instituted under Sections 302/34, 120-B



and 342 of the IPC against altogether 10 named accused persons including the petitioner and 2-3 unknown persons.

6. On completion of investigation, the Investigating Officer submitted police report under Section 173(2) of the Cr.P.C., vide charge-sheet no. 20/2007 dated 10.03.2007 under Sections 302/34 of the IPC and 27 of the Arms Act. Though the accused Amod Mandal, O.P. Mandal, Sikandar Mandal, Khokha Mandal, Chhotka Awadh Mandal, Vijay Mandal and Shankar Mandal were sent up for trial, the petitioner Bima Bharti and two others named in the FIR, namely, Mahavir Mandal and Motka Awadh Mandal were not set up by the police for trial holding their involvement in the case not true.

7. On receipt of the police report, the learned Magistrate took cognizance of the offence against the sent up accused persons. After supplying requisite papers as mandated under Section 207 of the Cr.P.C., the learned Magistrate committed the case to the Court of Sessions for trial. The Sessions Court framed charges against the accused persons, who were charge-sheeted by the Investigating Officer and the trial proceeded.

8. In course of trial, after examination of 8 prosecution witnesses, the informant filed an application on 08.03.2016 under Section 319 of the Cr.P.C. seeking summoning of the petitioner and two others to stand trial with the other accused persons.



9. After hearing the parties including the informant and the Public Prosecutor, the trial court, vide order dated 04.02.2017, exercising its power under Section 319 of the Cr.P.C., summoned the petitioner and two others for trial with the other accused persons.

10. Assailing the aforestated order dated 04.02.2017, Mr. Vindhya Keshri Kumar, learned Senior Advocate appearing for the petitioner submitted that on the basis of the materials collected during investigation and the statements of the witnesses recorded under sub-section (3) of Section 161 of the Cr.P.C. during investigation, the Investigating Officer was of the view that there was lack of evidence as against the petitioner and, therefore, without there being any other cogent material summoning of the petitioner by the trial court is bad in law. He has submitted that the order impugned is also bad in law and without jurisdiction in view of the fact that the petitioner was discharged after accepting final report by the court of Magistrate. He contended that the evidence as against the petitioner is shaky and not credible and, in such a situation, summoning of the petitioner as an additional accused would be futile exercise of power and would be cause of harassment to the petitioner as the materials in the case are flimsy. He has submitted that it is the duty of the court to see that innocent persons are not harassed.

11. On the other hand, Mr. Shyameshwar Dayal, learned



Additional Public Prosecutor for the State has submitted that the trial court has rightly exercised its power on the basis of deposition of the witnesses before it. He has submitted that it would be evident from the record that P.W.5 Vijay Kumar @ Vijay Paswan, who happens to be son of the deceased, P.W.6 Sonia Devi, who happens to be the widow of the deceased and informant in this case, P.W.7 Mukesh Kumar @ Mikki, who also happens to be another son of the deceased and P.W.8 Surti Kumari @ Satni Kumari @ Phool Kumari, who happens to be daughter of the deceased, fully supported the case of the prosecution. He has submitted that out of the aforestated four prosecution witnesses, P.W.6, P.W.7 and P.W.8 were present at the time of occurrence and they all are eye-witnesses to the occurrence of murder whereas P.W.5 has supported the alleged incident as a hearsay witness. He has contended that P.W.6, P.W.7 and P.W.8 have categorically stated that in their presence and within their view the deceased was forcibly taken out of his house by the accused persons and thereafter murdered in their presence by making multiple gunshot injuries on him. They all have stated that it was the petitioner Bima Bharti, who was leading the miscreants, who were variously armed and, on her exhortion, they committed murder of Chanchal Paswan. He has submitted that the post-mortem report of the deceased fully corroborates the depositions given before the court as 17 gunshot



injuries were found on the person of the deceased.

12. In the light of the aforesaid submissions, learned Additional Public Prosecutor has submitted that the evidence collected during trial are sufficient to lead conviction of the petitioner, who has been summoned to face trial and in that view of the matter, no illegality has been committed by the trial court in summoning the petitioner.

13. I have heard learned counsel for the parties and perused the record.

14. It is well settled position in law that the court has power to proceed under Section 319 of the Cr.P.C. even against those persons, who are not arraigned as accused. The provision prescribed under Section 319 of the Cr.P.C. is meant to achieve the objective that the real culprits should not get unpunished. It 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.”

15. I see no substance in the submissions made by the learned Senior Advocate for the petitioner that the trial court had no jurisdiction to summon the petitioner against whom final report was submitted by the Investigating Officer of the case, which was accepted by the court of Magistrate. It is well settled proposition of law that a person, who is named in the FIR with the allegation that he/she has committed any crime, but against whom the police does not file charge-sheet or drops the case, can be proceeded against under Section 319 of the Cr.P.C.

16. In *Hardeep Singh Vs. State of Punjab & Ors. [(2014) 3 SCC 92]*, a Constitution Bench of the Supreme Court has explained the aforesaid purpose behind the provision under Section 319 of the Cr.P.C. in the following manner :-

“13. It is the duty of the Court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question



remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Cr.P.C.?

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19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.”

17. It is true that at the stage of summoning the additional accused under Section 319 of the Cr.P.C., the degree of satisfaction, that is required, is much stricter.

18. In *Hardeep Singh Vs. State of Punjab* (Supra), the Constitution Bench of the Supreme Court had also occasion to examine the degree of satisfaction that is required for invoking the power under Section 319 of the Cr.P.C. After examining various earlier decisions, the Constitution Bench observed as under :-

“105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and



cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

19. If I apply the aforesaid principles to the facts of the case in hand, I find from the depositions of witnesses, which have been annexed to the present application, that if they stand un rebutted, they would be sufficient to record the finding of conviction against the petitioner, who has been summoned to face trial. From the depositions of witnesses it would be manifest that P.Ws. 5 to 8 clearly point out active participation of the petitioner in the commission of murder of the husband of the informant.

20. In that view of the matter, if the trial court has summoned the petitioner as an additional accused, no illegality can be found with the order impugned.



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

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24-08-2017
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