

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15212 of 2016

Arising Out of PS.Case No. -56 Year- 2012 Thana -CHAND District- BHABHUA (KAIMUR)

- =====
1. Yogesh Kumar Singh @ Laddu Singh
 2. Vikash Kumar Singh @ Guddu Singh @ Vikash Singh Both sons of Late Haushila Singh Resident of village - Dharauli, Police Station - Saiyadraja, District - Chandauli (U.P.).

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Bakshi S.R.P Sinha, Sr. Advocate.

For the Opposite Party/s : Mr. Vinay Kirti Singh, GA-2.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 27-03-2017

Heard Mr. Bakshi S.R.P. Sinha, learned senior counsel for the petitioners and Mr. Vinay Kirti Singh, GA-2, learned senior counsel for the State.

2. The petitioners filed this petition for quashing the order dated 11.09.2015 passed in Sessions Trial No. 66 of 2015/126 of 2015 by which the learned Sessions Judge took cognizance under Sections 147, 148, 323, 325, 307, 347, 386, 427, 353, 504 of the Indian Penal Code against the petitioners in Chand P.S. Case No. 56 of 2012.

3. On the basis of the fardbeyan of Sharun Kuamr, the informant, Chand P.S. Case No. 56 of 2012 was registered under Sections 307, 347, 386, 427 and other sections of the Indian Penal



Code against five persons including the two petitioners, namely, Yogesh Kumar Singh @ Laddu Singh and Vikash Kumar Singh @ Guddu Singh.

4. The police after investigation submitted final form/report under Section 173 (2) of the Code of Criminal Procedure (for short “the Code”) to the learned Chief Judicial Magistrate, Kaimur at Bhabua finding the case true against the accused, namely, Krishna Singh, Dablu Tiwary and Abhishek Tiwary. Investigating Officer did not find the case true against the petitioners, namely, Yogesh Kumar Singh @ Laddu Singh and Vikash Kumar Singh @ Guddu Singh. The learned Chief Judicial Magistrate vide order dated 30.10.2013 took cognizance against all the five accused persons including the petitioners under Section 307 and other sections of the Indian Penal Code differing with the findings of the Investigating Officer.

5. The petitioners preferred Criminal Revision No. 51 of 2014/492 of 2014/9 of 2014 and the learned Additional Sessions Judge, Kaimur at Bhabua vide order dated 17.09.2014 allowed the criminal revision and set aside the order of the learned Chief Judicial Magistrate dated 30.10.2013, on the ground that once the Investigating Officer has submitted the final form finding the case false against the petitioners, the Chief Judicial Magistrate has got



no jurisdiction to take cognizance against such persons in a case exclusively triable by the Court of Sessions, placing reliance upon the judgment reported in 2014 (2) PLJR 482 (SC) (Hardeep Singh Vs. State of Punjab)

6. The learned Chief Judicial Magistrate committed the case to the Court of Sessions and again the informant filed petition and after hearing, the learned Sessions Judge by order dated 11.09.2015 took cognizance against the petitioners also under Section 193 of the Code of Criminal Procedure.

7. Mr. Bakshi S.R.P. Sinha, learned senior counsel for the petitioners assails the order on the ground that learned Sessions Judge took cognizance of the offence although learned Chief Judicial Magistrate has already taken cognizance of the offence before commitment of the case. Therefore, the order of the learned Sessions Judge tantamounts to taking cognizance second time. It is further submitted that in view of the order passed in Criminal Revision No. 51 of 2014, the order of the learned Sessions Judge is illegal. It is further submitted that the learned Sessions Judge should have issued notice to the petitioners before taking cognizance under Section 193 of the Code and he placed his reliance in support of his contention on a judgment reported in **AIR 2016 SC 2266 (Balveer Singh & Anr. v. State of Rajasthan**



& Anr). It is held in the aforesaid judgment that the course of action adopted by the Sessions Court would not be permissible, but a proper opportunity was given to the accused and, therefore, the Apex Court dismissed the SLP upholding the order of the Sessions Court taking cognizance. In the present case, the learned Sessions Judge did not issue notice to the petitioners before taking cognizance of the offence under Section 307 and other sections of the Indian Penal Code under Section 193 of the Code.

8. In reply to the aforesaid submissions made by the learned counsel for the petitioners, Shri V. K. Singh, GA-2, learned senior counsel has submitted that the controversy has already been settled by the Constitution Bench of the Supreme Court in the case of Dharam Pal reported in **2013 AIR SCW 4491 (Dharam Pal & Ors. v. State of Haryana & Anr)** and there is no merit in this application.

9. The sole question falls for consideration is whether the learned Sessions Judge has got jurisdiction to summon such persons after commitment of the case under Section 193 of the Code against whom the learned Chief Judicial Magistrate has not taken cognizance under Section 190 of the Code? For better appreciation of the submissions, it would be appropriate to reproduce Sections 190 and 193 of the Code of Criminal Procedure



which reads as follows:-

190.Cognizance of offences by Magistrates.-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

193.Cognizance of offences by Courts of Session.-

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

10. On bare perusal of the provisions as contained in Sections 190 and 193 of the Code, it appears that there is a bar under Section 193 of the Code, the learned Sessions Judge shall not take cognizance unless the case is committed to the Court of Sessions by the Magistrate under this Code. Once the case is



committed, the bar is lifted and the Sessions Judge on the basis of the materials available on record can take cognizance and summon any accused if in his view sufficient materials are available to show that such person has committed crime.

11. This question fell for consideration before a Full Bench of this Court in the case of Sk. Latfur Rahman reported in **1985 PLJR 640 FB (Sk. Ratfur Rahman Vs. State)** and it is held that once the case is committed to the court of sessions, the Sessions Judge under Section 193 of the Code is empowered to take cognizance against whom sufficient materials are found to proceed. The same question again came before the Apex Court for consideration in Kishun Singh Case reported in **1993 2 PLJR 2 (Kishun Singh Vs. State of Bihar)** and the Apex Court in Para-16 of the aforesaid judgment has held as follows:-

“16. We have already indicated earlier from the ratio of this Court's decisions in the cases of Raghubans Dubey (supra) and Hareram (supra) that once the court takes cognizance of the offence (not the offender) it becomes the court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the court's duty to summon them to stand trial along with those already named, since summoning them would only be a part of the process of taking cognizance. We have also pointed out the difference in the language of Section 193 of the two Codes; under the old Code the Court of Session was precluded from taking cognizance of any offence



as a court of original jurisdiction unless the accused was committed to it whereas under the present Code the embargo is diluted by the replacement of the words the accused by the words the case. Thus, on a plain reading of Section 193, as it presently stands once the case is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case under Section 209 to the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the Court of original jurisdiction to take cognizance of the offence which would include the Summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record. The Full Bench of the High Court of Patna rightly appreciated the shift in Section 193 of the Code from that under the old Code in the case of S.K Lutfur Rahman (supra) as under :

"Therefore, what the law under Section 193 seeks to visualise and provide for now is that the whole of the incident constituting the offence is to be taken cognizance of by the Court of Session on commitment and not that every individual offender must be so committed or that in case it is not so done then the Court of Session would be powerless to proceed against persons regarding whom it may be fully convinced at the very threshold of the trial that they are prima facie guilty of the crime as well.

.... Once the case has been committed, the bar of Section 193 is removed or, to put it in other words, the condition therefore stands satisfied vesting the Court of Session with the fullest jurisdiction to summon an individual accused of the crime."



We are in respectful agreement with the distinction brought out between the old Section 193 and the provision as it now stands.”

12. In the case of Ranjit Singh reported in **AIR 1998 SC 3148 (Ranjit Singh Vs. the State of Punjab)**, Hon’ble Supreme Court after considering the old and new provisions of Sections 190 and 193 of the Code, doubted the ratio of Kishun Singh case (supra) and held that Sessions Judge cannot take cognizance and proceed afresh under Section 193 of the Code against such persons against whom Judicial Magistrate did not take cognizance under Section 190 of the Code. In such a case, such accused persons can only be summoned under Section 319 of the Code during trial. But the correctness of the ratio of Ranjit Singh Case (supra) was doubted in the case of Dharam Pal (supra) and the same was referred to a Constitution Bench of the Supreme Court. The Constitution Bench of the Supreme Court in the case of Dharam Pal reported in **2013 AIR SCW 4491 (Dharam Pal & Ors. v. State of Haryana & Anr)**, held that the law laid down in the case of Kishun Singh (supra) is good and the Sessions Judge has got power under Section 193 of the Code to summon such accused persons against whom cognizance under Section 190 of the Code was not taken. Now the question has been set at rest.

13. Learned counsel for the petitioners has



assiduously submitted in view of the law laid down in the case of Balveer Singh reported in **AIR 2016 SC 2266 (Balveer Singh & Anr. v. State of Rajasthan & Anr)** that the Sessions Judge before summoning the petitioner should have issued notice, but I find no force in the submissions of the Leanred counsel for the petitioners as the provisions as contained in Sections 190 and 193 of the Code does not provide for issuance of notice to an accused against whom there are sufficient materials available before taking cognizance.

14. Having considered the facts and discussions made above, I do not find any merit in this quashing petition and, accordingly, this quashing petition is dismissed as devoid of any merit.

(Prabhat Kumar Jha, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	

