

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.723 of 2014

=====

1. Uma Shanker Pandey @ Uma Pandey, S/o Late Ram Sagar Pandey @ Subhash Pandey.

2. Daya Shankar Pandey, S/o Late Ram Sagar Pandey @ Subhash Pandey.

3. Rajesh Kumar Pandey, S/o Daya Shankar Pandey.

All 1 to 3 are resident of village- Panchibenian, P.S.- Asawan, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Shatrughan Dubey @ Malik Dubey, S/o Sri Gangeshwar Dubey, R/o village- Babhnauli, P.S.- Asawn, District- Siwan.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv.

Mr. Jagannath Singh, Adv.

For the O.P. No.2 : Mr. Vindhya Keshari Kr. Singh, Sr. Adv.

Mr. Ajay Muherjee, Adv.

For the State : Mr. Kumar Ranjit Ranjan, APP

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT & ORDER

Date : 20-06-2017

An application filed on behalf of the State of Bihar, under Section 319 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the 'Code'*), has been allowed



by the impugned order, dated 05.08.2014, passed by the learned Adhoc Additional District & Sessions Judge-V, Siwan, in Sessions Trial No. 119 of 2010, whereby, he has issued summonses to the three petitioners in exercise of power under the said provision of the Code.

2. The present criminal revision application has been filed, under Section 397 read with Section 401 of the Code, putting to challenge the said order, dated 05.08.2014, mainly on the grounds that the court below has not applied its judicial mind before exercise of discretion required before issuance of summons under Section 319 of the Code and secondly that the prosecution witnesses in their depositions have attempted to improve the case of the prosecution for implicating these petitioners, which aspect ought to have been taken into account by the court below.

3. Facts essential for present adjudication are short. These petitioners and others were named as accused in Asawan P.S. Case No. 14 of 2007, registered for the offence punishable under Sections 147, 148, 149, 302, 326 and 307 of the Indian Penal Code and Section 27 of the Arms Act. The *charge-sheet* was submitted by the police under Section 173 of the Code, whereby, these petitioners were not sent up for trial, though two other persons were sent up for trial. Before submission of the *charge-sheet*, the informant (O.P. No. 2) had



filed a protest-cum-complaint petition, making allegation against the manner in which the police were conducting investigation. The informant alleged in his protest-cum-complaint petition that there was every apprehension of miscarriage of justice at the hands of the police as the police were acting in league with the accused persons.

4. The learned Chief Judicial Magistrate, Siwan, by an order, dated 29.09.2008, accepted the police report. The informant, thereafter, approached this Court by filing criminal revision application, being Cr. Revision No. 1505 of 2008, against the said order, dated 29.09.2008, whereby, the police report was accepted to the extent these petitioners were not summoned. This Court by an order, dated 18.09.2012, refused to interfere with the said order, dated 29.09.2008, primarily on the ground that the informant (O.P. No. 2) had alternative remedy available, under Section 319 of the Code, at appropriate stage.

5. After some of the prosecution witnesses were examined on 15.01.2014, learned Additional Public Prosecutor filed a petition on behalf of the State of Bihar, under Section 319 of the Code, stating therein, *inter alia*, as follows:-

"2. That in the course of investigation almost all the P.Ws supported the statement of the informant. Dy. S. P. conducted the supervision and submitted positive



report against all the named accused but the I. O. in this case was under the collusion of accused namely Daya Shankar Pandey, Umashankar Pandey, Pankaj Kumar Pandey, Vishwanath Pandey, Rajesh Pandey and submitted final form in favour of abovenamed accused under the provision of Section 173 of the Cr.P.C. but before the submission of the charge sheet informant was in apprehension and fearful so that he was filed a protest petition before the learned Chief Judicial Magistrate, Siwan on 18.03.2008."

6. Learned court below upon considering the depositions of the witnesses, particularly P.Ws. 6, 7 and 8, allowed the said application under Section 319 of the Code and has summoned these petitioners for trial.

7. There is another development, which is said to have taken place. The persons, who had been sent up for trial, namely, Sachidanand Pandey and Guddu Dubey, have been acquitted of the charge framed against them.

8. Mr. Y.V. Giri, learned Senior Counsel, appearing on behalf of the petitioners, has submitted that the court below has failed to exercise properly the required judicial discretion at the time of summoning a person, not an accused at the trial, which could be exercised only to achieve criminal



justice. He has submitted that such power is to be exercised sparingly only when it appears from the evidence that a person, not being the accused, has committed any offence for which such person could be tried together with the accused. According to him, there is no satisfaction recorded by the court below in the impugned order that it appeared to the court below, on the basis of evidence adduced at the trial, that these petitioners had committed the offence.

9. He has placed considerable reliance on Supreme Court decisions in case of **Michael Machado & Anr. Vs. Central Bureau of Investigation & Anr.**, reported in **(2000) 3 SCC 262**, and in case of **Hardeep Singh Vs. State of Punjab & Ors.**, reported in **(2014) 3 SCC 92**. Reliance has also been placed on another Supreme Court decision in case of **Krishnappa Vs. State of Karnataka**, reported in **(2004) 7 SCC 792**.

10. Mr. Giri, learned Senior Counsel, has also submitted that since main accused has been acquitted by the learned trial Court, no purpose would be served by summoning these petitioners under Section 319 of the Code. He has placed reliance on Supreme Court decision in case of **Hafiz Vs. State of U.P.**, reported in **2005 (3) ACR 3197 (SC)**, in support of his contention.

11. Mr. Vindhya Keshari Kumar, learned Senior



Counsel, appearing on behalf of the informant, has, on the other hand, submitted that power to summon a person, who is not an accused, as accused, vested in the trial Court under Section 319 of the Code, is discretionary in nature. He has submitted that the petitioners were named in the First Information Report with specific allegation against them. According to him, despite there being material collected in course of investigation, the police did not submit *charge-sheet* against these petitioners and as is evident from the application filed on behalf of the State, seeking order under Section 319 of the Code, Investigating Officer had acted in collusion and despite there being order of the Supervising Officer, he did not submit *charge-sheet* against these petitioners. According to him, considering the nature of evidence, adduced at the trial, there exists a possibility that the accused, so summoned in all likelihood, would be convicted. He has also placed reliance on the Supreme Court decision in case of **Hardeep Singh** (supra).

12. Before I consider rival submissions made on behalf of the parties, I must take note of the case of the prosecution in brief. According to the First Information Report, on 25.05.2007, in the evening, the informant along with a contractor of Reliance Mobile Company, namely, Vikash Kumar (the deceased), his nephew and some others had gone to a



land situate at Panchbeniyan High School for demarcation of the said land, for the purpose of installation of a Mobile Tower. In the meanwhile, the accused persons including these petitioners, armed with fire arms, came and surrounded the informant. They were objecting to erection of Mobile Tower over the said land. Allegedly, petitioner No. 1 and petitioner No. 2 started indiscriminate firing with a view to kill. One Ram Bilash Pandey directed his son, namely, Sachitanand Pandey, and his son's friend, namely, Guddu Dubey, to kill the contractor, whereupon, they opened fire, leading to death of the contractor, namely, Vikash Kumar.

Evidently, thus, these petitioners were named in the First Information Report and there were specific allegations against them.

13. I find from the impugned order and other materials available on the record that the witnesses had taken names of these petitioners before the police in course of investigation, showing involvement of these petitioners also in commission of the offence. In such circumstance, it cannot be said that for the first time the prosecution witnesses took the names of these petitioners at the trial, rather they were not named only in the First Information Report, but their names had surfaced in course of investigation also. Further, it is the specific case of the State that despite there being material



collected in course of investigation and direction by the Supervising Officer, the Investigating Officer had not submitted the *charge-sheet*. In such circumstance, it cannot be said that there was absolutely no material before the Court to exercise its power under Section 319 of the Code. In case of **Hardeep Singh** (supra), the Court held that for exercise of power under Section 319 of the Code, though only a *prima facie* case is to be established from the evidence led before the Court, it requires much stronger evidence than mere probability of complicity of a person being summoned under the said provision. The Supreme Court has lucidly laid down the test which has to be applied for exercise of power under Section 319 of the Code. The Supreme Court held that the test that has to be applied is one which has to be 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.

14. Explaining the expression, "it appears from the evidence that any person not being an accused has committed any offence" the Supreme Court said that its purpose is clear from the words "for which such person could be tried together with the accused". The Supreme Court stated that the words used are not "for which such person could be convicted". It is manifest, therefore, that a Court,



acting under Section 319 of the Code, is not required to form any opinion as to the guilt of the accused. The opinion which the Court is required to form, exercising discretionary jurisdiction under Section 319 of the Code, is as to whether 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. Apparently, the test is as to whether for the purpose of summoning a person, not an accused at the trial, for trial, the evidence should be such that it should appear to the Court that the said person has committed any offence.

15. Secondly, once the Court has exercised power under Section 319 of the Code, which is discretionary in nature, interference by a revisional Court shall be required only, if such order appears to be manifestly, unjust and without any basis. In the present case, there was cogent evidence before the Court for exercise of power under Section 319 of the Code, which cannot be termed to be so weak that no such power could be exercised.

16. In the facts and circumstances of the present case, in my view, since the exercise of discretion by the court below, while passing the impugned order, cannot be said to be completely unwarranted, I am not inclined to interfere with the said order.



17. Adverting to the submission made by learned Senior Counsel that since other persons have been acquitted, no purpose would be served by allowing these petitioners to put on trial, I do not find much force in such submission made on behalf of the petitioners after having gone through the said judgment of acquittal from which it appears that the prosecution witnesses, in their depositions, mentioned specific roles against these petitioners in commission of the offence. Decision of Supreme Court in case of **Hafiz** (supra), is in entirely different context, where, in similar circumstance, one set of accused persons were given benefit of doubt, whereas, others were held guilty. Here, so far as these petitioners are concerned, they are at the stage of summoning under Section 319 of the Code.

18. I, therefore, do not find any merit in this application. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	07-02-2017
Uploading Date	28-06-2017
Transmission Date	28-06-2017

