

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.974 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

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1. Ganpat Mauar @ Ganpati Mauar

2. Bhim Mauar,

Both Sons of Sri Aditya Mauar, Resident of Village - Hardiyan, Police Station - Tarari in the district of Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Smt. Dhanvarta Devi Wife of Sri Rajendra Mauar, Resident of Village - Hardiyan, Police Station - Tarari in the district of Bhojpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr. Adv.
Mr. Prabhu Narayan Sharma

For the Respondent/s : Mr. B. N. Pandey

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 15-03-2017

Heard learned Senior Counsel for the petitioners and learned Additional Public Prosecutor representing the State.

2. An order, dated 26.07.2014, passed by learned *Ad hoc* Additional Sessions Judge II, Bhojpur, at Ara, in Sessions Trial No. 427 of 2011, arising out of Tarari Police Station Case No. 70 of 2003, whereby the learned Court below has issued processes against the petitioners under Section 319 of the Code of Criminal Procedure, 1973 (for brevity, "the Code") to face trial, is under challenge in the



present criminal revision application filed under Section 397 read with Section 401 of the Code.

3. The accused of the said trial are charged of the offences punishable under Sections 307/149, 147, 148 and 504 of the Indian Penal Code.

4. It appears that Tarari Police Station Case No. 70 of 2003 was registered on 13.12.2003, on the basis of fardbayan of Opposite Party No. 2, alleging that (i) Aditya Mauar (ii) Bindhyachal Mauar (iii) Dinanath Mauar (iv) Kedar Mauar (v) Bhim Mauar (petitioner no. 2 herein) (vi) Ganpati Mauar (petitioner no. 1 herein) had assaulted the informant and his family members variously, there being dispute over passage between the two families. On the same day, Tarari Police Station Case No. 69 of 2003 was registered on the basis of fardbayan of one Kedar Mauar, alleging commission of offences punishable under Sections 147, 148, 149, 324, 307 of the Indian Penal Code and Section 27 of the Arms Act, 1959. In Tarari Police Station Case No. 70 of 2003, the Police submitted charge sheet against four persons, showing these petitioners, who were also accused, as not sent up. The persons against whom the charge sheet was submitted were thereafter put on trial. At the trial, the witnesses, in their evidence, stated about the active role played by not arraigned accused persons, i.e. these petitioners. PWs 1, 2 and 3, in



their examinations-in-chief and cross-examination, asserted the presence of petitioner no. 1 at the place of occurrence with a country-made pistol and petitioner no. 2 with a gun.

5. Considering such evidence adduced at the trial, learned Trial Court, coming to a conclusion of strong suspicion of the participation of these petitioners in the commission of the offence, has summoned them, in exercise of power under Section 319 of the Code.

6. Mr. Akhileshwar Prasad Singh, learned Senior Counsel, appearing on behalf of the petitioners, has submitted that the Police, upon completion of investigation, finding no material against these petitioners in their Police report, had shown these petitioners as not sent up. The said police report was accepted by the learned Court below and accordingly trial commenced against only such persons against whom the charge sheet was submitted. He has contended that effect of acceptance of the final report submitted by the police is of discharge of these petitioners and, therefore, they could not have been put on trial subsequently. He has also submitted that evidence of prosecution witnesses adduced at the trial are insufficient to constitute a case of strong suspicion against these petitioners of their participation in commission of offence and on that ground also, the impugned order requires interference.



7. The first contention raised by Mr. Singh, learned Senior Counsel, is not at all tenable. Section 319 of the Code confers upon the Trial Court a jurisdiction to summon such persons who are not accused. A person, who has been made accused in the First Information Report and against whom no charge sheet has been submitted by the Police and against whom cognizance has not been taken, can still be summoned in exercise of power under Section 319 of the Code.

8. The Supreme Court's decision, in the case of **Hardeep Singh v. State of Punjab**, reported in **(2014) 3 SCC 92**, is direct answer to this, paragraphs 116 and 117.6 of which read thus:-

"116. Thus, it is evident that power under Section 319 Code of Criminal Procedure can be exercised against a person not subjected to investigation, or a person placed in Column 2 of the charge-sheet and against whom cognizance had not been taken, or a person who has been discharge. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 Code of Criminal Procedure without taking recourse to provisions of Section 300(5) read with Section 398 CrPC.

117.6 *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 Code of Criminal Procedure 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."

9. As regards the question as to whether the evidence of prosecution witnesses adduced at the trial, the Trial Court ought to have summoned the petitioners under Section 319 of the Code, I am of the view that the test that has to be applied in such cases is that if the allegations went unrebutted, whether they would lead to conviction of such person or not. The power under Section 319 of the Code is discretionary and extra-ordinary power vested in the Trial Court. It is true that only where strong and cogent evidence occurred against a person from the evidence led before the Court, such power should be exercised and not in a casual manner.

10. The prosecution witnesses, in their evidence adduced at the trial, have alleged active participation of these petitioners in the commission of the offence. Summoning of these petitioners, in such circumstance, cannot be said to be



wholly unjustified.

11. I do not find any illegality in the impugned order. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
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