

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11369 of 2017

Arising Out of PS.Case No. -64 Year- 2014 Thana -BADHAILA District- SASARAM (ROHTAS)

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Vicky Kumar, son of Jai Kishun Singh, resident of village- Rotwan, P.S.- Baghaila,
District- Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar
 2. Basant Kumar son of Tulsi Singh
 3. Ranjit Kumar son of Tulsi Singh
- Both are resident of village- Rotwan, P.S.- Baghaila, District- Rohtas.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Prasad Singh, Sr. Advocate
	:	Mr. B. Shankar, Advocate
	:	Mr. M. Kumar Singh, Advocate
	:	Mr. S. Kumar, Advocate
	:	Ms. Meena Singh, Advocate
For the State	:	None

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 13-02-2018

In the present application preferred under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') the petitioner has prayed for quashing of the order dated 21.11.2016 passed by the learned Additional Sessions Judge-II, Rohtas at Sasaram in Sessions Trial No.389 of 2015 arising out of Baghaila P.S. Case No.64 of 2014 whereby he has rejected the petition filed by the petitioner under Section 319 of the Cr.P.C. for summoning the opposite party nos.2 and 3 as additional accused.

2. In the first information report altogether six accused were



named including opposite party nos.2 and 3. However, in course of investigation opposite party nos.2 and 3 were found innocent. They were not arraigned as accused in the charge-sheet, which was submitted against four other named accused persons, namely, Tulsi Singh, Ajit Kumar, Jaswant Kumar and Sarvjit Kumar under Sections 341, 342, 323, 307 and 302/34 of the Indian Penal Code (for short 'the I.P.C.'). On receipt of the charge-sheet, the learned Magistrate took cognizance of the offences and summoned the charge-sheeted accused persons. As the cognizance was taken, inter alia, for the offences punishable under Sections 307 and 302 of the I.P.C., which were exclusively triable by the Court of Sessions, the learned Magistrate, after complying with the provisions of Section 207 of the Cr.P.C., committed the case to the Court of Sessions for trial. In course of trial, after examination of six witnesses, an application was filed on behalf of the prosecution for summoning the opposite party nos.2 and 3 as additional accused under Section 319 of the Cr.P.C. The said prayer of the prosecution was rejected by the trial court vide impugned order dated 21.11.2016.

3. Assailing the aforesaid order dated 21.11.2016, Mr. Krishna Prasad Singh, learned Senior Advocate appearing for the petitioner submitted that the court below failed to appreciate the evidence on record and erroneously dismissed the application



preferred under Section 319 of the Cr.P.C.. He submitted that there was prima facie materials before the court below to summon the opposite party nos.2 and 3, but the court below dismissed the prayer on account of the fact that the police had not sent them up for trial. He submitted that in course of trial the injured Lali Singh and Jaikishun Singh were examined as P.Ws. 3 and 4 and the informant as P.W.5 and they all stated that the opposite party nos.2 and 3 had also assaulted them as well as to the deceased and, thus, the court below ought to have summoned the opposite party nos.2 and 3 in exercise of powers conferred under Section 319 of the Cr.P.C..

4. Despite repeated calls, no body appears on behalf of the State.

5. I have heard learned counsel for the petitioner and perused the record.

6. It would be manifest from perusal of the impugned order that the court below has taken into consideration the evidences adduced on behalf of the prosecution while dismissing the application filed on behalf of the prosecution. The trial court has recorded that from perusal of the inquest report and the postmortem report, it would be apparent that the deceased had sustained only three injuries out of which two were found simple and superficial and only one injury found on the forehead of the deceased was fatal. Considering the fact



that out of three injuries found on the person of the deceased, two were found simple and superficial and the police did not find sufficient material to send up opposite party nos.2 and 3 for trial as also the fact that no further evidence involving greater evidence than the evidence recorded during investigation under Section 161 of the Cr.P.C. had been collected during trial, the trial court dismissed the application filed on behalf of the prosecution.

7. At this stage, it would be relevant to note that a Constitution Bench of the Supreme Court in **Hardeep Singh vs. State of Punjab and Others [(2014)3 SCC 92]** settled the issue regarding degree of satisfaction for invoking powers under Section 319 of the Cr.P.C.. In the said case, the Supreme Court answered the question relating to situation in which powers under Section 319 of the Cr.P.C. should be exercised in respect of a person named in the FIR, but not charge-sheeted in the following manner:

“At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in *Vikas v. State of Rajasthan [(2014)3 SCC 321]*, held that on the objective satisfaction of the court



a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.”

8. The Constitution Bench further held:-

“Power under Section 319 CrPC is a discretionary and an extra ordinary 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.

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 CrPC.. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”

9. In Brijendra Singh and Others vs. State of Rajasthan, [(2017)7 SCC 706], the appellants were summoned as additional accused under Section 319 of the Cr.P.C. in respect of charges, inter alia, for the offences under Section 302/149 and Sections 3 and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. They were not arraigned as accused in the charge-sheet. The charges were framed against those, who were accused in the charge-sheet. The summoning order was challenged by



the appellants before the High Court. The High Court dismissed the revision petition preferred by the appellants. On their appeal, the Supreme Court observed that the degree of satisfaction to exercise power under Section 319 of the Cr.P.C. to summon any person not arraigned as accused is more than the degree warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. The Supreme Court while setting aside the order of summoning the appellants under Section 319 of the Cr.P.C. observed thus:

“.....the “evidence” recorded during trial was nothing more than the statements which were already there under Section 161 CrPC recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where a plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty-bound to look into the same while forming prima facie opinion and to see as to whether much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record.”



10. Having regard to the ratio laid down by the Supreme Court in the case of **Hardeep Singh** (supra) and **Brijendra Singh** (supra), I am of the considered opinion that if the trial court being of the opinion that no stronger evidence than mere possibility of their complicity was available on record dismissed the prayer of the prosecution to summon opposite party nos.2 and 3 as additional accused, no error can be found with the order. It has rightly held that the evidence recorded during trial were not strong enough to summon opposite party nos.2 and 3 as additional accused.

11. In that view of the matter, I see no merit in the present application. The application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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