

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 40235 of 2014

Arising Out of P.S. Case No.-60 Year-2009 Thana- CHANDAN District- Banka

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1. Ravi Mandal @ Ravi Kant Mandal, Son of Jai Kishore Mandal @ Fagu Mandal.
 2. Sanjit Mandal @ Sandeep Mandal Son of Gun Prakash @ Tipan Mandal.
 3. Anita Devi Wife of Chaturgun @ Chaturbhuj Mandal.
 4. Jalo Devi @ Jano Devi, Wife of Jai Kishore Mandal @ Fagu Mandal.
All Resident of Village-Jhingajhal, P.S.-Chandan, District-Banka.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bhola Nath Mandal, Son of Late Mangru Mandal resident of Village-Jhingajhal, P.S. Chandan, District- Banka.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Singh and Mr. Balram Karpi, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 08-03-2019

Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to as the 'Code') for the following relief:

*“That this quashing application is being
filed on behalf of the petitioners for quashing the
Impugned order dated 23.08.2014, passed by
Learned 1st Addl. Sessions Judge, Banka Sri
Jyotindra Kumar Sinha, passed in Sessions Case
No. (S.T.no.) 970/2009, TR No. 301/14 wherein and
whereby the Learned Ist Addl. Sessions Judge,*



Banka has allowed the petition dated 10.04.2014 filed by the Prosecution Under Sections 319 of the Cr. P.C. in which the learned court below has found sufficient evidence against the proposed accused i.e. petitioners for summoning to face the trial and further directed the O/C to issue summons against the petitioners.”

3. The issue relates to the petitioners being summoned under Section 319 of the Code on the ground that during trial, material against them had surfaced relating to their complicity in committing offence for which Chandan P.S. Case No. 60 of 2009 has been registered.

4. Learned counsel for the petitioners submitted that they are not named in the F.I.R. and even during investigation by the police, no witness under Section 161 of the Code has indicated their role and, thus, charge sheet was submitted against other persons who were also named in the F.I.R. and the trial had proceeded. It was submitted that during trial, certain witnesses have taken the name of the petitioners but the same does not satisfy the requirement of law, inasmuch as, for the purposes of summoning a person under Section 319 of the Code for facing trial, much stronger evidence than mere probability of his complicity is required. It was submitted that the test to be applied should be more than *prima facie* case as exercised at the time of framing of charge. For such proposition, learned counsel relied



upon a decision of a Bench of this Court dated 05.09.2017 in **Cr. Misc. No. 9805 of 2016 (Pammi Kumari & Ors. vs. The State of Bihar)**.

5. Learned A.P.P. submitted that during trial, witnesses had deposed assigning specific overt acts to the petitioners and based on the same, the Court had exercised power under Section 319 of the Code and summoned the petitioners. Learned counsel submitted that the decision of the Court in **Pammi Kumari** (supra) is a pronouncement on the requirement of law and in the present case, the law which is settled and also as enumerated in the aforesaid judgment, has not been violated. It was submitted that there is ample material in the statement of witnesses where they have assigned specific role to the petitioners in commission of the offence. Thus, it was submitted that the test required for summoning of persons to face trial under Section 319 of the Code stands satisfied.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. The Court below in the impugned order has considered the plea of the petitioners with regard to them not being named either in the F.I.R. or in the statement of witnesses under Section 161 of the



Code during police investigation. Further, it has dealt with the deposition of P.Ws. 2, 4, 5 and 6 and has also referred to the decision of **Hardeep Singh Vs. State of Punjab** reported as **2014(1) BBCJ IV-146**, on the issue. The Court has also been taken through the deposition of the said witnesses. From the same, it is clear that specific overt acts have been attributed to the petitioners in commission of the offence. Thus, when witnesses have stated in categorical terms before the Court with regard to specific overt act against the petitioners, in the considered opinion of the Court, clearly satisfies the requirement of Section 319 of the Code so as to justify summoning the petitioners to face trial. The specific role attributed to the petitioners by the witnesses, which fact is not controverted, cannot be said to be insufficient material for the Court to exercise power under Section 319 of the Code. Though, the test of such satisfaction has to be more than *prima facie*, but when during trial in the regular course of deposition of witnesses before the Court, names of persons who may not have been named in the F.I.R. and against whom the police may not have submitted charge sheet comes up, as in the present case, coupled with the fact that more than one witness has deposed assigning specific overt acts to the petitioners, the Court below has rightly allowed the plea of the prosecution to summon the



petitioners to face trial exercising power under Section 319 of the Code. The Court finds that the Court below has also rightly relied upon the decision of the Constitutional Bench of the Hon'ble Supreme Court in **Hardeep Singh** (supra), which is directly on the power of the Court under Section 319 of the Code. As far as the case of **Pammi Kumari** (supra) is concerned, the same has expounded the law, and in fact, applying the ratio in the present case also, this Court finds that the satisfaction required of the Court below for exercising power under Section 319 is met.

7. For reasons aforesaid, the application stands dismissed.

8. The case diary be returned to the Court below forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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