

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10548 of 2021

Arising Out of PS. Case No.-24 Year-2016 Thana- CHAORI District- Bhojpur

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1. SUKESH SAH @ SUKESH KUMAR S/o Dani Sah Resident of Village- Bhikampur, P.S.- Chauri, District- Bhojpur.
 2. Savita Devi W/o Pinto Sah @ Pintu Sah Resident of Village- Bhikampur, P.S.- Chauri, District- Bhojpur.
 3. Pinto Sah @ Pintu Sah S/o Dani Sah Resident of Village- Bhikampur, P.S.- Chauri, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nageshwar Sah @ Nagesar Sah S/o Late Shree Niwas Sah Resident of Village- Sahangi, P.S.- Agion (Garhani), District- Bhojpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bhaskar Shankar

For the Opposite Party no.2: Mr.Maya Shankar Mishra

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

6 19-12-2022 The learned counsel for the petitioners is directed to remove all the defects pointed out by the Stamp Reporter within one month.

I have already heard the learned counsel for the parties.

The present application has been filed by the petitioners for quashing the order dated 04.06.2018 passed by learned Addl. Sessions Judge-2nd, Bhojpur, Ara in S.T. No. 319 of 2016, arising out of Chauri P.S. Case No. 24 of 2016, whereby the petitioners, along with some other co-



accused persons, were summoned to face the trial under Section 319 of the Code of Criminal Procedure, hereinafter referred to as 'the Code'.

The learned counsel for the petitioners has submitted that the investigating authority, during the investigation, did not find materials against the petitioners and consequently submitted final form against them and they were not sent up for trial, but without applying judicial mind, the learned court below have been pleased to summon the petitioners without cogent evidence emerged against them during the course of trial. He has submitted further that the petition to summon the petitioners under Section 319 of the Code was filed twice by the prosecution side. On the first instance, it was rejected but on the second instance, it was allowed and the petitioners were summoned. He has also submitted that under the provision of the Code, the criminal court does not have jurisdiction to review its own order or judgment. Only clerical and arithmetical error in order or judgment can be corrected by invoking the provisions of Section 362 of the Cr.P.C.

The learned counsel for the petitioner has relied



upon a decision of Hon'ble Supreme Court in *Ramesh Chandra Srivastava Versus the State of U.P. & ANR., in Criminal Appeal No. 990 of 2021*, arising out of SLP (CrI.) No. 6381 of 2020. In that decision, the Hon'ble Apex Court has been pleased to hold that the power under Section 319 of the Code cannot and should not be invoked, unless cogent material emerges during the trial showing stronger probability of complicity of an accused.

From the perusal of the impugned order, it appears that all the witnesses have been examined in the trial except the investigating officer. They all unanimously named the petitioners along with other three co-accused persons, who have also been summoned under Section 319 of the Code. P.W.1, namely, Munna Sah has stated in his examination-in-chief in paragraph no.2 that after the marriage of his sister, Kamla Kumari, the accused persons, namely, Mukesh Sah, Dani Sah, Sita Sundari Devi, Sukesh Sah (petitioner no.1), Savita Devi (petitioner no.2), Pintu Sah (petitioner no.3), Ashok Sah (not petitioner, but summoned under Section 319 of the Code), Sunil Sah (not petitioner, but summoned under Section 319 of the Code)



and Urmila Devi (not petitioner, but summoned under Section 319 of the Code), started demanding a Hero Honda motor-cycle and L.E.D.TV soon after the marriage and when the informant showed his inability to provide the dowry, the accused persons burnt the deceased. Similar is the statement of P.W.2 and P.W.3.

It is settled principle of law that the test for summoning the accused under Section 319 of the Code should not be equated with the test for evidence for securing the conviction of the accused. During the course of an enquiry or trial of an offence whenever it appears to court from the evidence that any person not being the accused has committed any offence, the court may proceed against such person.

As discussed above, the witnesses have named the petitioners and other three accused persons inculcating them in the alleged occurrence with specific allegation that they subjected the deceased to cruelty for non-fulfilment of dowry demand. In my view, the evidence emerged during the course of trial is adequate to summon the accused persons under Section 319 of the Code, to face the trial.



In my view, the learned court below did not commit any error in passing the impugned order. As such, the petition stands dismissed.

Office shall ensure that all defects are removed by the petitioners within the stipulated time as provided hereinabove, failing which the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

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