

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2849 of 2011

Susanta Kumar Mohapatra

....

Petitioner

Mr. T.P. Mohapatra, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. P.K. Mohanty, ASC

CORAM:
JUSTICE R.K. PATTANAIK

ORDER

06.05.2022

Order No.

13.

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. Application under Section 482 Cr.P.C. is filed by the petitioner assailing the impugned order dated 12th August, 2011 passed in S.T. No.75/236 of 2010 by the learned Adhoc Additional Sessions Judge, Puri for having summoned and arrayed him as a co-accused invoking Section 319 Cr.P.C. on the grounds inter alia that it is illegal, improper, perverse and bad in law and therefore, liable to be set aside.

3. In the case at hand, an FIR was lodged by the informant later to which Brahmagiri P.S. Case No.54 of 2010 was registered under Section(s) 498-A, 304-B, 302 and 506 read with 34 IPC and Section 4 of the D.P. Act which ultimately led to the filing of charge sheet against the accused persons other than the petitioner. The FIR was lodged with the allegation that the marriage of the victim was solemnized with the accused husband during which demand of dowry was made and fulfilled but thereafter, a further demand of

Rs.50,000/- could not be honoured for which she was mentally as well as physically harassed and tortured and on 10th March, 2010, it was informed to them over telephone that she sustained burn injuries, where after, she was shifted to DHH, Puri and then, was referred to SCB Medical College and Hospital, Cuttack, where during treatment, she died on 14th March, 2010, subsequent to which, the FIR was lodged and a case under the alleged offences was registered which ultimately culminated in the filing of the charge sheet against the accused persons except the petitioner, who was directed to be arrayed as a co-accused by the impugned order under Annexure-1.

4. As submitted by the learned counsel appearing for the petitioner, the learned court below fell into serious error for having passed the impugned order dated 12th August, 2011, since at the relevant point of time, he was residing at Puri in a rented house and thus, was absent which was also revealed during the trial. It is further submitted that the reason behind the alleged incident is stated differently by the daughter of the deceased, considering which, the learned court below could not have allowed the petition filed under Section 319 Cr.P.C. and add the petitioner as a co-accused.

5. On the contrary, learned Standing Counsel appearing for the State contended that the learned court below having received positive evidence during trial showing the involvement of the petitioner, which is evident from the impugned order under Annexure-1 itself, rightly arrayed him as a co-accused even though he had not been charge sheeted by the local police. So, therefore, the impugned order under Section 319 Cr.P.C. passed by the

learned court below vide Annexure-1 is absolutely justified in law and hence, ought not to be set aside.

6. The absence of the petitioner and the reason disclosed by one of the prosecution witnesses is the basis upon which the legality of the impugned order under Annexure-1 is questioned. It is claimed that the petitioner was not present at the time when the alleged incident took place and that apart, the daughter of the deceased clearly stated the reason as to under what circumstances, the victim mother received the burn injuries. However, it is not denied that during the trial, it was deposed to the effect that the petitioner and other accused persons did subject her to ill-treatment and that he confined the victim and also poured kerosene on her, where after, the accused husband set her to flame with a match stick and when she attempted to save her by running out of the house, all other accused persons again pushed her inside and bolted the door from outside. The above evidence which said to have been received is indicated in Annexure-1. The question is, whether, such a decision of the court below is in accordance with law?

7. As per Section 319 Cr.P.C., where in the course of enquiry or trial, it appears from the evidence that any person not being a accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person and direct the person to be summoned or arrested, as the circumstances of the case may require for the aforesaid purpose. It is settled principle of law that when evidence is tendered during trial and the court received material to show involvement of a person not charge sheeted by the police, he may be added as an accused by invoking Section 319 Cr.P.C. which is a jurisdiction rarely to be exercised. The scope of Section 319 Cr.P.C. is limited in

the sense that it is an enabling provision which covers the post-cognizance stage, where in the course of an enquiry or trial, the involvement or complicity of a person/persons not named in the charge sheet has surfaced and it may happen only in cases where despite the name of the person having appeared during investigation, he has not been sent up at the time of filing of charge sheet. Again in cases where no evidence even collected during investigation but then, the involvement of the person made to appear during enquiry or trial, he may be added as a co-accused exercising power under Section 319 Cr.P.C. The above position of law is enunciated in catena of decisions of the Supreme Court including in *Kishun Vs. State (1993) 2 SCC 16* and *Nisar Vs. State (1995) 2 SCC 23* besides *Raj Kishor Vs. State (1996) 4 SCC 495*. In fact, in *Michael Machado Vs. CBI* reported in *(2000) 3 SCC 262*, the Apex Court has held and observed that a Court must have reasonable satisfaction that the other person has committed the offence and that for such offence, he could be tried along with other accused persons already arraigned and such exercise of power under Section 319 Cr.P.C so conferred should be only to achieve criminal justice. Again in *Rakesh Vs. State (2001) 6 SCC 248*, it has been further held by the Supreme Court that it is difficult to accept that the term 'evidence' as appearing in Section 319 Cr.P.C. would mean evidence which is tested by cross-examination, which can only arise after the person is added as an accused and not prior.

8. In so far as the instant case is concerned, some evidence has appeared during trial alleging the complicity of the petitioner and the extent of his involvement leading to the death of the victim with burn injuries which is challenged by claiming that it contradicts the evidence already on record. Under what circumstances, the death of the deceased had taken place and

whether the evidence which has surfaced against the petitioner to be truthful or otherwise can only be adjudicated upon at the end of the trial appreciating the entire evidence of the prosecution. Such evidence showing the involvement of the petitioner and its genuineness can only be tested by the learned court below while considering the same alongside the rest of the materials which cannot be discarded on the ground that contrary evidence is already available for appreciation. The only requirement to apply the above provision is that there should be positive evidence showing the complicity of the person, who for certain reason has not been charge sheeted by the police. As to the present case, some evidence was received against the petitioner which is required to be tested during trial which is to commence afresh after he having been added as a co-accused. In other words, the petitioner shall have the opportunity to cross-examine all such witnesses by a *de novo* trial which is mandatory in view of Section 319(4) Cr.P.C. So, therefore, the Court is of the considered view that the learned court below having received evidence against the petitioner had to add him as a co-accused for a trial along with others and rightly such power was exercised under Section 319 Cr.P.C. That apart, the entire material on record shall have to be examined in order to find out and ascertain credibility of such claim at the end of the trial. Having said so, the Court does not find any serious wrong or illegality being committed by the court below in passing the impugned order under Annexure-1 which, therefore, requires no intervention in exercise the Court's inherent jurisdiction. As a corollary, the petitioner, who has been added as an accused, since summoned by the learned court below, is required to appear for the purpose of trial in S.T. Case No.75/236 of 2010.

9. Accordingly, it is ordered.

10. In the result, application under Section 482 Cr.P.C. filed by the petitioner stands dismissed.

(R.K. Pattanaik)
Judge

TUDU

