

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2615 of 2019

Nirmala Jena and others *Petitioners*

-versus-

State of Odisha *Opposite Party*

CORAM: JUSTICE S.PUJAHARI

ORDER

07.01.2022

Order
No.

04.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed with a prayer to quash the order dated 9th April, 2019 passed by the learned P.O., Special Court under the S.C.&S.T. (PoA) Act, Cuttack, vide which the petition filed by the prosecution under Section 319 of Cr.P.C. has been allowed, and the present petitioners have been directed to be summoned to face trial along with the accused persons already in the array of the accused for the offence under Sections 341, 294, 506, 427 and 307/34 of IPC read with Section 3(1)(x) of the S.C. & S.T. (PoA) Act.

3. Heard the learned counsel for the Petitioners and the learned counsel appearing for the State.

4. Petitioners in this case assail the impugned order on the ground that since there is contradiction between the F.I.R. allegation and the evidence of the witnesses examined so far, with regard to the involvement of the petitioners in the alleged incident, no fruitful purpose will be served by summoning the petitioners under Section 319 of Cr.P.C., and that rather, the same would amount to an abuse of the process of law. In this regard, learned counsel for the Petitioners has drawn the notice of this Court to the evidence of the witnesses.

5. Learned counsel for the Petitioners having placed reliance on the decision of this Court in the case of ***Trilochan Rout -Vrs.- State of Orissa and others, reported in 2017 (I) OLR-491***, submits that in the face of the material contradiction in the evidence of the witnesses examined, the learned trial Court without taking note of the same could not have mechanically proceeded against the Petitioners under Section

319 of Cr.P.C., though Court has discretionary power to summon the accused during the trial.

6. Learned counsel for the petitioners has also placed reliance on another decision of this Court rendered in the case of *Bhagirathi Jena and 8 others -Vrs.- State of Orissa, reported in 2012 (II) OLR-708* to buttress his contention that in absence of reliable and sufficient evidence on record against the petitioners, the impugned order is not sustainable in law.

7. However, learned counsel for the State drawing the notice of the Court to the evidence brought on record, submits that the same is sufficient enough to arrive at a conclusion that the Petitioners are the left out accused persons who committed the offences along with those who are already under trial. He further submits that at this stage a detailed appreciation of the evidence adduced by the prosecution is not an essential requirement to exercise the power under Section 319 of Cr.P.C. and that the Court is required to have a satisfaction with regard to the involvement of the Petitioners in the offence alleged. He has placed reliance on a Constitution Bench decision of the

Apex Court in the case of ***Hardeep Singh -Vrs.- State of Punjab & Others, reported in (2014) 3 SCC 92*** which has been reiterated in several subsequent decisions. According to him, the contention of the petitioners is bereft of substance.

8. In the case of ***Hardeep Singh (supra)***, the Constitution Bench of the Apex Court has been pleased to elaborate on various aspects including the stage of the proceeding, circumstances leading to the application of Section 319 of Cr.P.C., and degree of satisfaction of the trial Court for summoning the accused persons not arraigned as accused, to face the trial for the offences alleged. In paragraphs-90 and 106 of the said judgment, it has been held as follows:-

“90. As held in *Mod. Shafi and Harbhajan Singh*, all that is required for the exercise of the power under Section 319 CrPC is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s). It is essential to note that the section also uses the words “such person could be tried” instead of should be tried. Hence, what is required is not to have a mini-trial at this stage

by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

106. 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 unrebutted, 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. Since the case of the *Hardip Singh* (supra) holds the field now, the same is bound to be followed, and the question raised here needs to be addressed in the light of the principles laid down in the said case. In that view settled principles and

having considered the evidence already produced by the prosecution, this Court is of the view that there appear sufficient grounds for summoning the petitioners to be tried along with the accused persons already under trial, for the offences alleged. Hence, this Court finds no illegality or infirmity in the impugned order.

10. Accordingly, the CRLMC stands dismissed.

11. However, if the Petitioners surrender and move for bail before the Court in seisin over the matter, the said Court on taking note of the fact that the co-accused persons are already on bail, shall consider their prayer in course of the same day and allow them to be released on bail on such terms and conditions as it may deem just and proper.

(S.Pujahari)
Judge

DA/MRS