

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1042 of 2018

Arising Out of PS. Case No.-635 Year-2014 Thana- BEGUSARAI TOWN District- Begusarai

SURENDRA KUMAR MAHARAJ @ SURENDRA MAHARAJ @
SURENDRA KUMAR Son of Late Shyam Sundar Maharaj, resident of
Village Mokhtiyarpur, Police station- Bhagwanpur, District- Begusarai.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satish Kumar Singh, Advocate
For the Opposite Party	:	Mr. Ajay Kumar Thakur, Advocate
		Mr. Sandeep Kumar Gautam, Advocate
For the State	:	Sri Ganesh Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 23-01-2024 On 9th October, 2014 one Deepak Kumar, Sub-Inspector of Police at Begusarai Town police station recovered a dead-body of an unknown person who was apparently murdered by strangulation. After recovery of the dead-body, he made a statement before the officer-in-charge of the police station and on the basis of the said statement, Begusarai Town, Police Station Case No. 635 of 2014 dated 9th October, 2014 under Section 302/201/34 of the Indian Penal Code was instituted against unknown accused persons.

2. After recovery of the dead-body, police sent the dead-body for post-mortem examination. According to the petitioner post-mortem was done in a hasty manner. On the



same day within about 15/20 minutes after the recovery of the dead-body. After post-mortem examination, one Mirtunjay Kumar Singh recognised the said dead-body as that of his son's body. He made an informatory statement stating, inter alia, that on 9th October, 2014 his son Manish Kumar (deceased) was carrying some important documents relating to ownership of their landed property to Lohia Nagar, Begusarai. On the way, he was intercepted by one Vijay Maharaj, Ashok Maharaj, Kumar Sanjay @ Razy Maharaj, Shankar Yadav, Hito Yadav and some other unknown persons. They forcibly abducted the son of the said Mirtunjay Kumar Singh and committed his murder. The statement of Mirtunjay Kumar Singh was recorded as SANHA Entry No. 151 of 2014 dated 9th October, 2014. Further case of the petitioner is that on the basis of the said SANHA, police started investigation of the case. Subsequently, however, during investigation police recovered some Call Details Report (CDR) between the deceased and the present accused person/petitioner. Only on the said Call Details Report, over which, the deceased and the petitioner had talks on the date of occurrence, SANHA named accused persons were not sent up for trial and the present petitioner was sent up for trial. The learned Magistrate took cognizance of offence on the basis of the chargesheet filed



by the police officer and subsequently the learned Sessions Judge took cognizance of offence under Section 193 of the Code of Criminal Procedure. Then, the case was transferred to the court of the learned Additional Sessions Judge, 1st Court at Begusarai, the said case was registered as Sessions Trial No. 247 of 2016. Charge was framed against the petitioner for committing offence under Section 302/201/34 of the Indian Penal Code, they pleaded not guilty. Trial of the case commenced and as per the submission made by the learned Advocate for the petitioner six witnesses have already been examined.

3. That on 17th May, 2017 and also on subsequent dates, viz, 19th September, 2017, 8th February, 2018, 6th June, 2017 and 12th March, 2018 petitions were filed by the accused person/ petitioner under the provision of Section 193 of the Cr.P.C. with a prayer to take cognizance of offence against Vijay Maharaj, Ashok Maharaj, Kumar Sanjay @ Razy Maharaj, Shankar Yadav and Hito Yadav who were initially named as accused persons by the father of the deceased to face trial in the said case i.e. Sessions Trial No. 247 of 2016.

4. In course of argument, the learned Advocate for the petitioner filed two supplementary affidavits narrating



certain facts and developments as well as list of dates and chain of events revealed from the case diary.

5. It is submitted by the learned Advocate for the petitioner that during investigation of the case, the father of the deceased, namely Mirtunjay Kumar Singh filed a Cr. Writ Application No. 1128 of 2014 with a prayer to handover the investigation of the case to CBI on the ground, inter alia that the police investigation suggested that it was directed towards a wrong person. The accused person/petitioner was booked in course of investigation on the basis of some Call Details Report which never suggested the petitioner's involvement in committing the offence. On the other hand, the statement of the father, mother and maternal uncle of the deceased clearly pointed towards the guilt of the initial accused persons who were finally discharged by the police at the time of filing of the chargesheet.

6. It is also submitted by the learned Advocate for the petitioner that the deceased during his lifetime, submitted an application before the Superintendent of Police, Begusarai stating his apprehension that he may be murdered by the accused persons who were discharged by police.

7. Under such circumstances, the petitioner filed an



application before the learned trial Judge to take cognizance of offence against the accused persons whose names were disclosed initially by the father of the deceased and other witnesses. The said application having been dismissed, the instant Revision arises.

8. I have heard the learned Advocate for the petitioner and the learned Advocate for the informant who filed SANHA stating the names of the initial accused persons as the perpetrator of offence.

Having heard the learned counsels for the parties, the following points are raised for determination of the question of law involve in the instant Revision:-

(a) Whether the accused person can make an application under Section 193 of the Code of Criminal Procedure praying for an order before the learned trial Judge to take cognizance against some other accused persons not sent up for trial.

(b) Whether any such application under Section 193 of the Code of Criminal Procedure is maintainable after framing of charge against the accused person and



recording of evidence of six witnesses (as told by the learned Advocate for the petitioner).

(c) Whether in the instant Revision any order can be passed without implicating the said Vijay Maharaj, Ashok Maharaj, Kumar Sanjay @ Razy Maharaj, Shankar Yadav, Hito Yadav.

(d) Whether the principles laid down in the case of **Dharampal & Ors. vs. State of Hariyana and Ors.** reported in (2014) 3 SCC 306 is applicable at this stage.

9. For proper adjudication of the case, all the above mentioned points are taken up together for discussion for the sake of convenience and remedy.

10. Section 193 of the Code of Criminal Procedure speaks about the cognizance of offences by courts of Session.

The Section runs thus:-

“Section 193. Cognizance of offences by Courts of Session. - Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”



11. A plain reading of Section 193 shows that after a case being committed to the court of Session, the Session court shall take cognizance of any offence as a court of original jurisdiction. In Sessions Trial No. 247 of 2016, the learned Additional Session Judge, Begusarai took cognizance of offence against the petitioner as he was named in the chargesheet and produced before him to face trial. In **Dharampal & Ors. vs. State of Hariyana and Ors. (supra)** it is held in unequivocal terms that the Sessions court is empowered on commitment under Section 209 to proceed against such persons not named as accused and issue summon to them under Section 193 even without waiting for Section 319 stage.

12. The Hon'ble Supreme Court came to the above conclusion on the facts that an F.I.R. was registered against one *N* and the appellants for commission of offence under Section 307 and 323 read with Section 34 of the Indian Penal Code. The police after investigation, submitted its report under Section 173(2) of the Cr.P.C. before the Magistrate sending only *N* for trial while including the names of the appellants in column 2 of the report. On receipt of such police report, the Magistrate did not straightaway commit the case to the Sessions Court but, on



an objection being raised by the complainant, issued summons to the appellants to face trial with other accused *N* as the Magistrate was convinced that a prima facie case to go for trial had been made out against the appellants as well. Further while doing so, the Magistrate did not hold any further inquiry, as contemplated under Section 190, 200 or even 202 of the Cr.P.C. but proceeded to issue summons on the basis of police report only. The order of the learned Magistrate was questioned by way of Revision before the Additional Sessions Judge, Hisar in Cr. Revision No. 27 of 2000, who upheld the order of the learned Magistrate and dismissed the Revision. The order of the learned Sessions Judge was thereafter challenged before the High Court, which also upheld the views expressed by the learned Magistrate as well as the learned Sessions Judge and dismissed the appellants' application under Section 482 of the Code for quashing the order dated 25th March, 2002 passed by the learned Additional Sessions Judge, Hisar, affirming the order dated 21st July, 2000, of the Judicial Magistrate, 1st Class, Hansi passed on an application filed under Section 190 of the Code for summoning appellants in connection with F.I.R. No. 272 dated 13th October, 1999 registered under Sections 307 and 323 read with Section 34 of the Indian Penal Code, 1860 with Narnaund



police station. The accused persons against whom summons was issued by the learned Magistrate were the petitioners before the learned Additional Sessions Judge and subsequently before the High Court. They were the appellants before the Hon'ble Supreme Court also. Thus, it is found from the factual background of **Dharampal & Ors. vs. State of Haryana and Ors. (supra)** that the accused persons who were not initially sent up by the police in the chargesheet, but against whom, summons was issued under Section 204 of the Cr.P.C. to appear and face trial before the learned Sessions Judge where the aggrieved persons and they preferred the Appeal before the Hon'ble Supreme Court.

13. In the instant case, the persons who were initially named in SANHA were not sent up by the police in the chargesheet and no cognizance was taken against them either by the Magistrate under Section 193(1) (b) or Section 193 of the Cr.P.C. Before this court, the accused person who is facing trial is the petitioner who are aggrieved because of the fact that the persons whose names were stated in SANHA were not sent up for trial. In my considered view, the petitioner cannot be said to be the aggrieved person in the instant Revision because of the fact that if anybody is really aggrieved, he is Mirtunjay Kumar



Singh, father of the deceased. After filing of chargesheet, he did not make any application before the learned Additional Sessions Judge with a prayer to implicate the persons who were named in his initial information (SANHA). Therefore, I have no hesitation to hold that the instant Revision at the instance of the present petitioner is not maintainable in law.

14. In **Dharampal & Ors. vs. State of Hariyana and Ors. (supra)**, the superior courts were moved by the aggrieved persons against whom cognizance was taken, though, they were not sent up for trial by the police immediately after issuance of summons. On the contrary in the instant case, charge has been framed and six witnesses have been examined, and at this stage, there is no scope to apply Section 193 of the Code of Criminal Procedure.

15. The failure on the part of the petitioner in not impleading the persons who are sought to be brought in the array of accused also violates the principle of Audi Alteram Partem. No order can be passed against any person without giving opportunity of being heard. In the instant case, if the persons are directed to be implicated to face trial, such order will be passed without giving any opportunity of hearing to them.



16. Last but not the least, the father of the deceased appears before this court through his learned Advocate and it is submitted by the learned Advocate on behalf of the father of the deceased that he is not inclined to proceed against the persons who were named initially in his information because of the fact that subsequently he came to know that the accused person was the real culprit. He and other witness also made statement under Section 164 of the Cr.P.C. before the learned Magistrate during investigation implicating the present accused person. It is needless to say that SANHA report is a mere statement under Section 161 of the Cr.P.C. However, a statement of a witness recorded under Section 164 of the Cr.P.C. is admissible in evidence and chargesheet was filed on the basis of the statement recorded under Section 164 of the Cr.P.C. made by the father of the deceased and other witnesses.

17. For the reasons stated above, this court is of the view that the principles laid down in **Dharampal & Ors. vs. State of Hariyana and Ors. (supra)** is not applicable in the instant case under the facts and circumstances and the instant Revision is liable to be dismissed.

18. All the points for discussion as framed by this court are decided against the petitioner. The revisional



application is accordingly, dismissed.

19. However, I am duty bound to note a word of appreciation for Mr. Satish Kumar Singh, learned Advocate for the petitioner and Mr. Ajay Kumar Thakur, learned Advocate for the father of the deceased for rendering their help and placing the points of law beyond the interest of the respective parties for whom they have appeared.

20. The petitioner is however given liberty to take recourse of relevant provisions under the Cr.P.C. to implicate the persons who are not sent up for trial in accordance with law, if advice, under Section 319 of the Cr.P.C.

(Bibek Chaudhuri, J)

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