

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66538 of 2023

Arising Out of PS. Case No.-113 Year-2019 Thana- BELA District- Sitamarhi

Birbahadur Rai, Son of Late Ramswarup Rai @ Late Swarup Rai, resident of
Village- Bathuara PS- Bela Dist- Sitamarhi.

... .. Petitioner

Versus

1. The State of Bihar
2. Nagendra Rai son of Late Ram Swarup Rai @ Late Swarup Rai Village-
Bathuara P.S.- Bela Dist- Sitamarhi
3. Mahendra Rai son of Late Ram Swarup Rai @ Late Swarup Rai Village-
Bathuara Ps- Bela Dist- Sitamarhi
4. Ram Pravesh Rai son of Nagendra Rai Village- Bathuara P.S.- Bela, District
- Sitamarhi

... .. Opposite Parties

Appearance :

For the Petitioner : Mr. Birendra Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 06-08-2024 Heard Mr. Birendra Kumar, learned counsel for the

petitioner and Mr. Jharkhandi Upadhyay, learned APP for the

State.

2. In this case, the petitioner has challenged the

order dated 18.07.2023 passed by the learned Additional District
& Sessions Judge, 14th, Sitamarhi, in Sessions Trial No.293 of
2022, arising out of Bela P.S. Case No. 113 of 2019, by which
the application under section 319 filed by the petitioner
(informant) for summoning of additional accused has been
rejected.

3. As per the F.I.R., while the informant was



sitting near the door of his house, the accused persons came there holding deadly weapons and started abusing the informant. When the informant objected to the same, the accused persons started assaulting him. It has also been alleged that when the daughter-in-law of the informant came to save him, she was also assaulted by the accused persons and they also snatched golden *Mangalsutra* and tore her blouse, as a result of which, she became naked. Upon hearing the noise, when the local people came the accused persons fled away.

4. Learned counsel for the petitioner has submitted that there is allegation against the opposite party nos.2 to 4 and the same has been supported by the witnesses during trial and moreover, injuries were been found on the body of the informant. On the basis of the aforesaid facts, the petitioner filed an application under section 319 of the Cr.P.C. for summoning of the additional accused but the trial Court without considering the case diary as well as injury report has passed the impugned order rejecting the application of the petitioner.

5. I have considered the submissions of learned counsel for the petitioner and perused the materials on record including the impugned order. In the last paragraph of the



impugned order, the trial Court has considered the materials and on the basis of which the application of the petitioner (informant) for summoning the additional accused has been rejected.

6. While considering the scope of section 319 of the Cr.P.C., the Constitution Bench of the Hon'ble Supreme Court in the case of ***Hardeep Singh vs. State of Punjab*** reported as ***(2014) 3 SCC 92*** has held as follows:-

“57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned in Column 2 of the charge-sheet or any other person who might be an accomplice.

“105. Power under Section 319 Cr.PC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a



person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

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.”

7. In the case of ***Sukhpal Singh Khaira vs. State of Punjab*** reported in (2023) 1 SCC 289, the Constitution Bench of the Hon’ble Supreme Court has framed the guidelines which must follow while exercise the power under section 319



of the Cr.P.C. which are as under : -

- “(i) if the competent court finds evidence or if application under Section 319 Cr.P.C. is filed, regarding involvement of any other person in committing the offence based on evidence “recorded at any stage in the trial” before passing of the order on acquittal or sentence, it shall pause the trial at that stage and the Court shall proceed to decide the fate of the application under Section 319 Cr.P.C.;*
- (ii) if the Court decides to summon an accused under Section 319 Cr.P.C., such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its mind to the fact as to whether such summoned accused is to be tried along with other accused or separately; and*
- (iii) if the power under Section 319 Cr.P.C. is not invoked or exercised in the main trial till its conclusion and if there is a split up case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated trial).”*



8. On going through the aforesaid decisions of the Hon'ble Supreme Court, it is clear that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a *prima facie* case is *sine quo non* for summoning an additional accused. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked. In the present case, the trial Court, in the last paragraph of the impugned order, has discussed the materials and has held that the opposite party nos. 2 to 4 have not been found to have played any role in committing the crime and therefore, the trial court has rejected the application of the petitioner (informant) for summoning the additional accused. I also find no ground to interfere in the impugned order.

9. Considering the aforesaid facts and also the law laid down by the Hon'ble Supreme Court in the case of ***Hardeep Singh vs. State of Punjab*** and ***Sukhpal Singh Khaira vs. The State of Bihar (supra)***, I do not find any merit in this case. Accordingly, this application is dismissed.

(Sandeep Kumar, J)

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