

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.809 of 2023

Arising Out of PS. Case No.-523 Year-2020 Thana- AHİYAPUR District- Muzaffarpur

Chandan Kumar Son Of Madan Paswan Resident Of Village - Kolhua
Paigamburpur New Police Line Road, Near Dr. Rajiv Kumar's Clinic, P.S. -
Ahiyapur, District - Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ravi Kumar Rajak Son Of Satendra Rajak Resident Of Companybagh
Yogiya Math, P.S. - Town, District - Muzaffarpur
3. Jyoti Narayan Singh Son Of Tej Narayan Singh Resident Of Harpur, Lahori,
New Police Line Road, Ward No.12, P.S. - Ahiyapur, District - Muzaffarpur
4. Devanand Singh Son Of Jyoti Narayan Singh Resident Of Harpur, Lahori,
New Police Line Road, Ward No.12, P.S. - Ahiyapur, District - Muzaffarpur
5. Gopal Sah Son Of Nahendra Sah Resident Of Harpur, Lahori, New Police
Line Road, Ward No.12, P.S. - Ahiyapur, District - Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Masoom Alam, Advocate
For the Resp. No. 3&4	:	Mr. Rajeev Kumar Singh, Advocate
		Mr. Gyanendra Kumar, Advocate
For the Resp. No. 5	:	None.
For the State	:	Mr. Binod Kumar No. 3, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 05-08-2025

Heard Mr. Masoom Alam, learned counsel for the
petitioner, Mr. Rajeev Kumar Singh, learned counsel for the
respondent nos. 3 & 4 and Mr. Binod Kumar No.3, learned APP
for the State.

2. The present criminal revision has been filed against
the order dated 02.08.2023 passed by the court of the learned



Additional District & Sessions Judge-6-cum-Special Judge, POCSO, I, Muzaffarpur, by which the learned trial court rejected the petition dated 11.05.2023 filed by the petitioner under Section 319 of the Code of Criminal Procedure (in short, 'Cr.P.C.') for summoning the O.P. Nos. 3 to 5 as accused in the trial of O.P. No.2 in connection with Ahiyapur P.S. Case No. 523 of 2020.

3. The allegations levelled by the petitioner in his FIR relate to a sexual offence and the murder of the victim, who happened to be the daughter of the petitioner. The FIR was registered by the petitioner initially against unknown persons under Section 363 of the IPC, in which later the offences under Sections 302 and 201 read with Section 34 of the IPC were added.

4. After investigation, the police chargesheeted O.P. No. 2, namely Ravi Kumar Rajak, for the offences under Sections 363, 341, 342, 302, 376(DA), and 201/34 of the IPC, and Sections 4, 6, and 8 of the Protection of Children from Sexual Offences Act (in short, 'POCSO Act'), and also under Sections 3(w)(i)(ii) and 3(2) (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (in short 'SC/ST Act'). Accordingly, he faced trial and, as per the petitioner's counsel, has been convicted for the charged offences. During the course of the trial of O.P. No. 2, a petition under Section 319 of Cr.P.C. was filed by the petitioner



(vide Annexure-P/4), in which he referred to several paragraphs of the case diary and the testimonies of PW-1 to PW-7 to substantiate his claim regarding the involvement of O.P. Nos. 3 to 5, particularly in the offence under Section 201 of IPC.

The learned trial court rejected the petitioner's prayer, finding no substance in the request to invoke the provisions of Section 319 of Cr.P.C., and discussed the materials that came out during the trial in detail to determine whether there was any merit in the allegations levelled by the petitioner against O.P. Nos. 3 to 5.

5. The first and foremost argument advanced by Mr. Masoom Alam, learned counsel appearing for the petitioner, is that the victim, who was merely eight years old at the time of occurrence, went to the shop of O.P. No. 2 with one girl, namely Gunja Kumari, to purchase some cosmetic items but thereafter went missing. Consequently, the FIR was registered against unknown persons. It later came to light that O.P. Nos. 3 to 5 were also present at the shop of O.P. No. 2 when the victim went there. The manner in which the alleged occurrence of murder took place, followed by the disappearance of the victim and efforts to conceal material evidence, clearly suggests that more than one person was involved in the commission of the alleged occurrence. This is the



main reason for the petitioner to suspect that O.P. Nos. 3 to 5 were involved in committing the alleged offences or in helping the main accused in concealing relevant evidence of the alleged offences of rape and murder.

6. No one is present on behalf of O.P. No. 5.

7. Mr. Rajeev Kumar Singh, learned counsel appearing for O.P. Nos. 3 and 4, submits that the learned trial court rightly rejected the petitioner's application by the impugned order, as there is not even *prima facie* evidence that came out during the course of the trial of O.P. No. 2 to show the involvement of the other O.Ps in the commission of the alleged offences. Mere suspicion raised by the petitioner, without support from the prosecution's evidence, is insufficient to summon them under Section 319 of Cr.P.C. and there is nothing on record.

8. I have heard both sides and perused the evidence of the prosecution that came before the trial court in connection with the trial of O.P. No. 2. The petitioner's prayer made under Section 319 of the Cr.P.C. for summoning O.P. Nos. 3 to 5 as accused to face trial along with O.P. No. 2 has been rejected. The provision of Section 319 Cr.P.C. reads as under:

*‘ where, in the course of any inquiry into,
or trial of, an offence, it appears from the evidence*



that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such persons for the offence which he appears to have committed’.

From a bare reading of the aforesaid provision, it is clearly evident that, for summoning a person as an accused during the course of trial, there must be some evidence that has come on record during the trial before making the prayer under Section 319 of the Cr.P.C. and from such evidence, there must be the satisfaction on the part of the trial court that it appears that the person sought to be summoned as an accused has committed an offence for which he could be tried together with the other accused who is/are already facing trial. The trial court’s satisfaction must be based on the evidence that has come on record in the course of trial. It is a settled law that suspicion, however so strong, cannot be treated as an evidence.

At this juncture, I would like to refer to some judgments of the Hon’ble Apex Court with regard to the rightful use of the provision under Section 319 of the Cr.P.C. In the case of ***Municipal Corporation of Delhi vs. Ram Kishan Rohtagi and***



Others, reported in (1983) 1 SCC 1, it was observed by the Hon'ble Apex Court in paragraph no. 19 that the power conferred upon the trial court under Section 319 of Cr.P.c. is an extraordinary power which should be used very sparingly and only if compelling reasons exist for taking cognizance against the other persons against whom action has not been taken. The Hon'ble Court's observation is reproduced as under:-

“ 19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the court concerned so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against Respondents 2 to 5 will not prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it. ”



While reiterating the aforesaid principle, the Hon'ble Apex Court in the case of *Mohd. Shafi vs. Mohd. Rafiq and Another*, reported in (2007) 14 SCC 544, observed in paragraph 12 that before exercising the jurisdiction under Section 319 of Cr.P.C., the trial court must be satisfied that there exists a possibility that the person sought to be summoned as an accused would, in all likelihood be convicted. The relevant paragraph no. 12 of this judgment is reproduced as under:

“ 12. From the decisions of this Court, as noticed above, it is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the court concerned may also like to consider other evidence. We are, therefore, of the view that the High Court has committed an error in passing the impugned judgment. It is accordingly set aside. The appeal is allowed. ”

In the case of *Vikash vs. State of Rajasthan*, reported in (2014) 3 SCC 321, the Hon'ble Apex Court observed that while exercising the power conferred under Section 319 of the Cr.P.C., the trial court should exercise this extraordinary power very



sparingly, and ensure that the principles of rule of law and the basic principles of criminal law jurisdiction are not vitiated. The relevant paragraph no. 12 of this judgment is reproduced as under:

“ 12. A perusal of Section 319 CrPC would clearly indicate that on the objective satisfaction of the court a person may be “arrested” or “summoned” as the circumstances of the case may require if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons. The court should exercise judicial discretion on a consideration of the totality of the facts and circumstances of a given case and in a manner where proper procedures are followed that are fundamental to the right of fair trial of the accused. The section demands more circumspection by the trial court while exercising its powers since it confers an extraordinary power and should be used by the court very sparingly thereby ensuring that principles of the rule of law and basic tenets of criminal law jurisprudence are not vitiated.”

9. If we conjointly take into account the aforesaid principles laid down by the Hon’ble Apex Court and the provisions of Section 319 of the Cr.P.C., it becomes clearly evident that the



power under Section 319 of the Cr.P.C. for summoning a person as an accused during the trial of other accused should be exercised very sparingly, and only when if there exists the possibility that the accused so summoned would, in all likelihood, be convicted. Such satisfaction must be based on the evidence that has come out during the course of the trial.

10. Now, I come to the present matter, all the material witnesses of the prosecution, upon whom reliance has been placed by the petitioner, simply stated that O.P. No. 3, Jyoti Narayan Singh, who was the owner of the house in which O.P. No. 2 had taken a shop on rent, was standing near the stairs, while the other O.Ps were sitting at the counter and inside the shop of O.P. No. 2 on the alleged day of the occurrence. It is neither the case of the prosecution nor has it come out in the evidence of the prosecution witnesses that O.P. Nos. 3 to 5 were seen with O.P. No. 2 at the time when the alleged offences of rape and murder were being committed. None of the prosecution witnesses claimed or stated that they saw O.P. Nos. 3 to 5 removing the dead body from the shop or concealing material evidences related to the commission of the alleged offences. Therefore, mere presence of these O.Ps at the shop of O.P. No. 2 during the relevant time, without establishing any specific role of any of them in the commission of



the alleged offences either just before or after the occurrence with the main accused (O.P. No. 2), would not be sufficient to put these O.Ps on trial for the alleged offences. Furthermore, the allegations levelled by the petitioner, which neither find place in the FIR nor has emerged during the trial in the testimony of any witness are completely based on suspicion. Such suspicion cannot be made a ground for summoning O.P. Nos. 3 to 5 to face trial along with O.P. No. 2.

11. Accordingly, I am of the considered opinion that the evidence given by the prosecution witnesses before the trial court, prior to the filing of the petition by the petitioner under Section 319 of Cr.P.C., was not sufficient to summon the O.P. Nos. 3 to 5 as accused for subjecting them to trial for the alleged offences along with the co-accused, Ravi Kumar Rajak (O.P. No. 2), who was facing trial at that time, because the petitioner fails to satisfy this Court from the evidences which had come in the trial court before he filed his petition under Section 319 of Cr.P.C. that, if O.P. Nos. 3 to 5 had been summoned, there was a possibility of their conviction.

12. As such, I find no merit in the present Revision Petition, and the learned trial court rightly rejected the petitioner's prayer by the impugned order. There is no illegality or impropriety



in the same. Therefore, the instant Revision Petition stands dismissed.

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	NA
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