

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25033 of 2023

Arising Out of PS. Case No.-164 Year-2015 Thana- MANJHI District- Saran

1. Nagendra Tiwary, son of late Ramji Tiwary.
2. Prabhakar Tiwary, son of Nagendra Tiwary.
3. Diwakar Tiwary, son of Nagendra Tiwary.
4. Rakhi Devi @ Rakhi Tiwari, wife of Prabhakar Tiwary.
All resident of Village- Sadhpur Balia, P.S- Kopa, Distt.- Saran at Chapra.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner	:	Mr. Awadhesh Kumar, Advocate Mr. Shashikant Amar, Advocate Mr. Manish, Advocate
For the Opposite Party	:	Mr. Ram Bilash Roy Raman, APP Mr. Shashi Bhushan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 30-10-2024

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel appearing for the father of the deceased.

2. In this case, the petitioners have challenged the order dated 15.11.2022 passed by the learned Additional District & Sessions Judge, VII, Saran at Chapra, in S. Tr. No.467 of 2016, by which the petitioners have been summoned under section 319 of the Criminal Procedure Code to face the trial for the offences under Sections 323, 307, 498-A, 504/34 of the Indian Penal Code in connection with Manjhi P.S. Case No.164 of 2015.



3. This Court vide order dated 22.07.2024 permitted learned counsel for the petitioners to withdraw this application on behalf of petitioner no.1. Hence, this order is restricted to petitioner nos. 2 to 4 only.

4. As per the prosecution case, the victim namely, Shilpi Devi, gave her statement before the Police in injured condition, alleging therein that she was married to Satya Prakash Tiwari in the year 2013 as per Hindu customs but just after one month of the marriage, Nagendra Tiwari her father-in-law; Satya Prakash Tiwari her husband; Prabhakar Tiwari and Diwakar Tiwari her brothers-in-law and Rakhi Devi her sister-in-law (*Gotni*) used to abuse and assault the victim for demand of dowry. The victim has informed this fact of assault and abuse to her parents. It has also been alleged that the accused persons tried to burn the victim by pouring kerosene oil upon her and after that in the month of January, 2015 i.e. on the eve of *Makar Sakranti* the accused persons again attempted to kill the informant by poisoning and on account of consuming poison, she was admitted at Sadar Hospital, Chapra. When this news was published in the daily newspaper, her parents came to know and they visited her in-laws house and took the victim to their house.



4.1. It has further been alleged that in the marriage of her brother-in-law (*devar*), the victim was taken to her sasural by her in-laws and after the marriage she was brought to her parents house by her husband as she was pregnant. On 06.08.2015 at about 2:00 P.M. her husband came to her house and entered into the room where the victim was sleeping with her *bhabhi* namely, Renu Devi. Thereafter, the husband of the victim started abusing her and after breaking the *almirah* he tried to take away the jewellery. When the informant objected, her husband fired at her, which hit at the right wrist and stomach of the informant. Since her *bhabhi* Renu Devi tried to snatch the pistol from her husband, he again fired upon Renu Devi, which hit at her left hand. In the meantime, the family members came into the room and during the process of snatching the pistol from the hand of the husband of the victim, the pistol got fired which hit the left hand of her husband.

5. On the basis of the aforesaid statement of victim, Manjhi P.S. Case No. 164 of 2015 was registered for the offences under sections 341, 323, 307, 326, 498-A and 504/34 of the Indian Penal Code. However, in course of treatment the victim died and therefore, an application was submitted by the Investigating Officer for adding section 302 of the Indian Penal



Code in the F.I.R.

6. After investigation, charge-sheet was submitted on 29.10.2015 finding the case to be true under sections 307 and 302 of the Indian Penal Code and under section 27 of the Arms Act against Satya Prakash Tiwary i.e. husband of the deceased whereas, investigation was kept pending against other persons. Thereafter, final form dated 12.06.2016 was submitted finding the case to be not true for the offences under section 307 and 302 of the Indian Penal Code against petitioner nos. 2 to 4 which was accepted by the learned Magistrate. The cognizance was taken against Satya Prakash Tiwary i.e. husband of the deceased for the offence under sections 307 and 302 of the Indian Penal Code and under section 27 of the Arms Act vide order dated 13.06.2016.

7. A protest petition was filed by Renu Devi, who is the *bhabhi* of the deceased, who had also sustained injury due to the firing resorted to by the husband of the deceased, before the learned Additional Chief Judicial Magistrate, V, Saran at Chapra, which was instituted as Complaint Case No.2733 of 2016. The learned Magistrate vide order dated 24.07.2019 dismissed the same by holding that there is no specific material or any overt act attributed against other



accused persons except the husband of the deceased.

8. Against the order dated 24.07.2019 passed by the learned Magistrate, the *bhabhi* of the deceased namely, Renu Devi preferred Criminal Revision No.199 of 2019 before the learned District & Sessions Judge, Saran at Chapra unsuccessfully. In the meantime, an application dated 29.05.2018 under section 319 of the Cr.P.C. was filed on behalf of the Public Prosecutor before the learned Additional District & Sessions Judge, VII, Saran at Chapra for proceeding against the petitioners. The learned Additional District & Sessions Judge vide impugned order dated 15.11.2022 directed for issuance of summons against the petitioners to face trial for the offence under sections 323, 307, 498-A and 504/34 of the Indian Penal Code.

9. Learned counsel for the petitioners submits that petitioner no.2 is a constable in Bihar Military Police and was deputed in the Special Task Force at Aurangabad and on 14.01.2015 and 14.01.2015 i.e. on the eve of Makar Sakranti he was on duty at Aurangabad. The petitioner no.3 is also a constable in the Bihar Police and on 14.01.20215 and 15.01.2015 he was also on duty.

10. Learned counsel for the petitioner further



submits that the thrust of allegations is mainly with regard to the incident which took place on 06.08.2015 at the parents house (*naihar*) of the deceased, where only the husband was present and the accusations were only against him. Apart from this, the witnesses have reiterated the allegation of torture against the in-laws and the allegation of poisoning the victim/deceased on 15.01.2015 by the in-laws. These materials had already been tested and considered, whereupon the petitioners were not sent-up for trial by the police. The final form exonerating the petitioners was accepted by the learned Court below and thereafter, the Protest-cum-Complaint and criminal revision filed by the *bhabhi* of the deceased were dismissed. Yet again, despite no new material surfacing during the course of deposition of witnesses, the petitioners have been summoned under the provision of Section 319 of the Cr.P.C.

11. Learned counsel for the petitioners also submits that while summoning the petitioners under Section 319 of the Cr.P.C., to face trial, the trial court has relied upon the version as narrated in the F.I.R. without appreciating the fact that the power under section 319 of the Cr.P.C. is a discretionary and an extraordinary power and it is to be exercised sparingly and only in those cases where the circumstances so warrant.



12. It has been submitted by learned counsel for the petitioners that the petitioners have been summoned for offences under sections 323, 307, 498A, 504/34 of the I.P.C., i.e., not for the occurrence alleged to have been committed at the *naihar* of the deceased. The trial Court has formed his opinion on the basis of Exhibits 3 & 4 and opined that the Doctor at Sadar Hospital Chapra, has found traces of poison in the food.

13. It has also been submitted that there is no discussion in the impugned order as to what weighed the trial court, on the basis of deposition of witnesses, who have been examined as prosecution witnesses, so as to reach to a conclusion, that the petitioners are required to be summoned to face trial. Summon has been issued merely on the basis of the suspicion being raised. There is no clear, substantial and specific evidence of complicity of the present petitioners, which could be termed as stronger evidence.

14. Learned counsel for the petitioners has relied upon the decisions of the Hon'ble Supreme Court:-

(i) *Hardeep Singh vs. the State of Punjab*

(2014) 3 SCC 92;

(ii) *Brijendra Singh & Others vs. State of*



Rajasthan reported as (2017) 7 SCC
706 and

(iii) *Michael Machado & Others Vs. the
Central Bureau of Investigation*
reported as (2000) 3 SCC 262.

15. Learned counsel appearing for the father of the deceased has supported the impugned order by submitting that there is no illegality and irregularity in the impugned order. He has further submitted that the deceased, who was pregnant, taken to the hospital where she made her statement before the police and on the basis of the statement of the deceased the F.I.R. has been lodged.

16. It has been submitted by learned counsel for the father of the deceased that the witnesses namely, Chandan Kumar Mishra- P.W-1, Vinay Kumar Mishra- P.W-2, Hridyanand Mishra- P.W-3, Manju Devi- P.W-4, Renu Devi- P.W-5 in their statement have fully supported the prosecution case. The witness no.6 Lalan Ji Pandey has exhibited the informatory petition filed by deceased. The doctor at Sadar Hospital, Chapra has found traces of poison in the food, which is marked as exhibit- 3 and 4. It is, thus, clear that all the members of in-laws of the deceased used to torture her and with



common intention they tried to kill the deceased on two occasions. At first instance by pouring kerosene oil upon her and in second instance by poisoning.

17. It has been argued by learned counsel for the father of the deceased that the Investigating Officer, after investigation, submitted the charge-sheet dated 29.10.2015 against accused Satya Prakash Tiwari under section 307, 302 of the Indian Penal Code and under section 27 of the Arms Act. The Investigating Officer in collusion with the accused persons submitted the final form exonerating the petitioners but on an application dated 29.05.2018 under section 319 of the Cr.P.C. filed on behalf of the Public Prosecutor before the learned Additional District & Sessions Judge, VII, Saran at Chapra for proceeding against the petitioners, the learned Additional District & Sessions Judge vide impugned order dated 15.11.2022 directed for issuance of summons against the petitioners to face trial for the offence under sections 323, 307, 498-A and 504/34 of the Indian Penal Code as the learned Judge has found sufficient material against the petitioners.

18. Learned counsel for the petitioners has relied upon the decision of the Hon'ble Supreme Court in the case of *Y Saraba Reddy vs. Puthur Rami Reddy* reported as 2007 (4)



SCC 773 wherein it has been held that the trial court can add any person as accused to face trial if it is satisfied at any stage of the proceeding on the evidence adduced that such person is required to be sent for trial. Such persons may be initially named in F.I.R. but not charge sheeted, the trial court can do so only on the basis of evidence and not on the basis of materials in the charge-sheet or case diary because materials in case diary or charge-sheet do not constitute evidence.

19. Lastly, it has been submitted that the resultant act of murder of Shilpi Devi is the culmination of harassment and torture by in-laws due to dowry demand of Rs.1,00,000/-. The witnesses have named Nagendra Tiwari, Prabhakar Tiwari, Diwakar Tiwari and Rakhi Devi to be involved in the alleged torture and attempted to murder by pouring Kerosene oil upon the deceased and by poisoning. Therefore, the Court below finds sufficient material on record that these four persons initially named in the F.I.R, but not charge-sheeted have committed the offence alleged under Section 323, 307, 498(A), 504/34 I.P.C.

20. I have considered the submissions of the parties and perused the materials on record including the impugned order.



21. The Hon'ble Supreme Court in the case of ***Michael Machado and Ors. vs. The Central Bureau of Investigating*** (supra) has held in paragraph nos. 11 to 14 as under:-

"11. The basic requirements of invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the Court is only a discretion as could be discerned from the words "the Court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should



turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the Court to proceed against other persons.

13. *In Municipal Corporation of Delhi V Ram Kishan Rohtagi (1983) 1 SCC 1, this Court has struck a note of caution, while considering whether prosecution can produce evidence to satisfy the Court that other accused against whom proceedings have been quashed or those who have not been arrayed as accused, have also committed an offence in order to enable the Court to take cognizance against them and try them along with the other accused. This was how learned Judges then cautioned.*

“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 compelling reasons exist for taking cognizance against the other person against whom action has not been taken.”

14. *The Court while deciding whether to invoke*



the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of Sub-section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be re-commenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite a large in number the Court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the Court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the Court should refrain from adopting such a course of action.”

22. In *Brijendra Singh & Ors. vs. State of Rajasthan (supra)* the Hon’ble Supreme Court has held in paragraph no. 13 as under:-

"13.In order to answer the question, some of the principles enunciated in Hardeep Singh's case may be recapitulated:

Power Under Section 319 Code of Criminal Procedure can be exercised by the trial court at any stage during the



trial, ie before the conclusion of trial, to summon any person as an Accused and face the trial in the ongoing case, once the trial court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the I.O. at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power Under Section 319 Code of Criminal Procedure. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court Under Section 319 Code of Criminal Procedure and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong



and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity".

23. From the aforesaid judgments of the Hon'ble Supreme Court, it appears that for summoning an accused under section 319 of the Cr.P.C. the evidence led by the prosecution has to be seen. A person can only be summoned if from the evidence it can be gathered that he appears to be guilty of the offence i.e. from the materials brought before the Court during trial. The power to summon additional accused under section 319 Cr.P.C. has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence found against a person from the evidence led before the Court, such person can be summoned. The power to summon cannot be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than



mere probability of his complicity. For summoning an additional accused, the Court must have a reasonable satisfaction from the evidence already concluded that the person has committed an offence and he can also be tried along with other accused who has already been chargesheeted. The Court has also to be hopeful that there are reasonable prospects of conviction against the newly added accused and unless such materials i.e. strong prima facie evidence which would result in conviction of a person is found, he cannot be summoned.

24. From the materials available on record and from the evidence recorded during trial, it will appear that the petitioners were not charge-sheeted. The petitioner nos. 2 and 3 are Government servants and they were at their place of posting while the incident took place. The petitioner no.4 is a woman and the occurrence has taken place at the parental house of the deceased where her husband was there who has been injured. Just because, the petitioner nos. 2 to 4 have been named as accused in the F.I.R. and when they have not been charge-sheeted as the police found the case false against them, they cannot be summoned merely on the statement of the witnesses. In my opinion, this is not a fit case for exercise of the power under section 319 of the Cr.P.C. which should be used sparingly.



25. In view of the aforesaid discussions, the impugned order is not sustainable and the same is fit to be quashed.

26. Accordingly, this application is allowed. The impugned order dated 15.11.2022 passed by the learned Additional District & Sessions Judge, VII, Saran at Chapra, in S. Tr. No.467 of 2016, by which the petitioners have been summoned under section 319 of the Criminal Procedure Code to face the trial in connection with Manjhi P.S. Case No.164 of 2015, is hereby quashed with respect to petitioner nos. 2 to 4 only.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	30.10.2024
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