

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.36683 of 2016

Arising Out of PS. Case No.-97 Year-2007 Thana- DURAULI District- Siwan

Ravi Shankar Pati Dubey S/o Nawal Kishore Pati Dubey resident of Village-
Done, P.S.- Darauli, District- Siwan.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prabhakar Singh, Adv.

For the Opposite Party/s : Mr. Binod Kumar No.3, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

Date : 25-03-2025

Heard Mr. Prabhakar Singh, learned counsel for the petitioner and Mr. Binod Kumar No.3, learned APP appearing for the State.

2. The instant petition has been filed under section 482 of the Code of Criminal Procedure (in short the Cr.P.C.) with a prayer to quash the order dated 21.06.2016 passed by the learned 2nd Assistant Sessions Judge, Siwan in Sessions Trial No. 161 of 2008, arising out of Darauli P.S. Case No. 97 of 2007, whereby the learned Assistant Sessions Judge has allowed the application filed by the prosecution under section 319 of the Cr.P.C and



consequently directed the petitioner to be summoned to face the trial.

3. Learned counsel for the petitioner submits that the petitioner was named in the FIR but after investigation, he was not sent up by the police and the concerned Magistrate also did not take cognizance against him. Thereafter, the prosecution filed a petition before the trial court to add the name of the petitioner in the cognizance order and that petition was rejected and thereafter, a petition was filed under section 319 of the Cr.P.C. which was rejected, though not on merit, and thereafter, the prosecution again made a prayer under section 319 of the Cr.P.C. to summon the petitioner.

4. Learned counsel for the petitioner submits that copies of the depositions of prosecution witnesses, PW 1 to PW 6, have been filed and from its perusal, it is evident that all the said prosecution witnesses did not level any specific allegation against the petitioner in the commission of the alleged occurrence and the allegations levelled by them against the petitioner is completely vague and general and the same is not sufficient to summon the petitioner by invoking the provisions of section 319 of the Cr.P.C and it is settled position of law that there must be strong materials to summon one as an accused



during the trial in the light of the prosecution evidences and for exercising the said power, the prosecution evidence upon which reliance is placed by the prosecution must be much stronger than the evidences which are required to find out prima facie commission of an offence by an accused at the time of taking cognizance and in this matter at the time of passing the order impugned under section 319 of the Cr.P.C, no strong evidence appears from the evidence of PW 1 to PW 6 and even the I.O., who was examined as PW 6, did not say anything to show the petitioner's involvement in the alleged occurrence. In support of this submission, learned counsel has placed reliance upon the judgement of the Hon'ble Apex Court passed in the case of ***Hardeep Singh v. State of Punjab*** reported in ***(2014) 3 SCC 92*** and the relevant paragraphs upon which reliance has been placed are being reproduced as under:-

*“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in *Vikas v. State of Rajasthan [(2014) 3 SCC 321 : (2013) 11 Scale 23]*, held 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”.

“105. Power under Section 319 CrPC 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 un rebutted, 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”.

5. It is further submitted that it is settled position of law that after summoning one as an accused under section 319



of the Cr.P.C, such person, accused, must be given an opportunity of hearing before adding him as an accused and in this regard, the observation made by the Hon'ble Apex Court in the paragraph no. 8 of the judgement in the case of ***Yashodhan Singh & Ors. v. State of U.P. & Ors*** reported in ***(2023) 9 SCC 108*** is relevant. The said paragraph is being reproduced as under:-

“8. Shri S. Nagamuthu, learned Senior Counsel, at the outset submitted that para 9 of Jogendra Yadav [Jogendra Yadav v. State of Bihar, (2015) 9 SCC 244 : (2015) 3 SCC (Cri) 756] has categorically recorded that when an accused is summoned in exercise of the power under Section 319 of the Criminal Procedure Code, 1973 (“CrPC” for short), such an accused has to be heard before being added as an accused to face trial; that such an accused has a further right of hearing if he challenges the summoning order before the High Court and further before this Court. In light of the observations of this Court in Jogendra Yadav [Jogendra Yadav v. State of Bihar, (2015) 9 SCC 244 : (2015) 3 SCC (Cri) 756] , the right of an accused, who is summoned to be heard before being added as an accused has been recognised by this Court; that in the instant case because there was no such hearing that was provided to the appellants, who were added as accused, in light of the aforesaid judgment, the impugned order [Yashodhan Singh v. State of U.P., 2023 SCC OnLine All 700] may be set aside and the matter may be remanded to the Sessions Court for giving an opportunity to the appellants of being heard before being added as accused”.



6. It is lastly submitted that the petitioner was minor aged about 14-15 years at the time of commission of the alleged occurrence and in this regard, there is sufficient evidence with the petitioner to prove his juvenility being at the time of commission of the alleged occurrence.

7. On the other hand, learned APP appearing for the State, while referring to the provisions of section 319 of the Cr.P.C., has vehemently opposed the prayer of the petitioner and submitted that power conferred under section 319 of the Cr.P.C. has been rightly exercised by the trial court and there is sufficient material against the petitioner in the evidence of the prosecution witnesses examined before the trial court to show the petitioner's active involvement in the commission of the alleged offences and the evidence of these prosecution witnesses is much stronger than the materials which are required to find out prima facie petitioner's involvement in the commission of the alleged offences.

8. Heard both the sides and perused the impugned order, particularly, the depositions of the prosecution witnesses examined before summoning the petitioner under section 319 of the Cr.P.C.



9. As per prosecution story, on the alleged date and time of the occurrence, the accused persons, including the petitioner, who were named in the FIR, came at the field of the informant and started harvesting the crop which was objected by the informant and his family members and thereafter, the accused persons assaulted the informant by using Lathi, Danda, fists and slaps and the most important witnesses of the alleged occurrence are the informant and his son, Umesh Singh, who were examined as PW 3 and PW 4 respectively, and from perusal of their evidence, it clearly appears that the petitioner was present at the place of occurrence and they have clearly deposed that the petitioner was also involved in the commission of alleged occurrence, though, they could not have revealed specific role of the petitioner but did not deny the active participation of the petitioner in the alleged occurrence and these materials are much stronger than the material which is required to take cognizance of the alleged offences against the petitioner and in this regard, the learned trial court has rightly exercised its power under section 319 of the Cr.P.C.

10. So far as the liberty to the petitioner to be heard before adding him as an accused in the light of principle laid down by Hon'ble Apex Court in the case of *Yashodhan Singh*



(supra) is concerned, there is no plea on behalf of the petitioner that such liberty has not been granted to him till date and the trial court is bound to give proper opportunity to the petitioner of hearing before adding him as an accused if in this regard, prayer is made on behalf of the petitioner.

11. The learned trial court is directed to pass an appropriate order after holding an inquiry by the trial court itself or by J.J. Board with regard to the petitioner's plea of juvenility if in this regard, a petition is filed by him with sufficient prima facie material and such plea must be decided as per the provisions of Juvenile Justice Act.

12. Accordingly, this court finds no illegality in the order impugned and no merit in this petition and the same stands disposed of.

(Shailendra Singh, J)

BKS/-

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