

**(2008) 03 JH CK 0006**

**Jharkhand High Court**

**Case No:** Criminal M.P. No. 1537 of 2007

Narayan Sao, Smt. Babita Devi  
and Miss. Sulochana Kumari @  
Sulakshna Kumari

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** March 10, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 173(2), 173(2)(1), 190(1), 209
- Penal Code, 1860 (IPC) - Section 307, 323, 325, 34, 341

**Citation:** (2008) CriLJ 3341

**Hon'ble Judges:** Dilip kumar sinha, J

**Bench:** Single Bench

**Advocate:** Jai Prakash, for the Appellant; Assistant Public Prosecutor, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

D.K. Sinha, J.

The petitioners have invoked the inherent jurisdiction of this Court u/s 482 Cr.P.C. for the quashment of the entire criminal prosecution against them in Markacho P.S. Case No. 10 of 2007 corresponding to G.R. No. 31 of 2007 as also for the quashment of the cognizance of the offence taken by the C.J.M., Koderma on 14.8.2007 for the offence under Sections 341/323/325/307/504/34 I.P.C. against the petitioners.

2. The prosecution story lies in a narrow compass.

3. The informant Sitaram Sao in his written report presented before Markacho police alleged that on the day of reporting i.e. on 15.1.2007 at about 7 a.m. all the seven named accused persons including the petitioner No. 1 Narayan Sao and petitioner No. 3 Miss Sulochana Kumari @ Sulakshna Kumari attacked the inmates after entering in his house. In the same transaction it was alleged that the accused Mahendra Sao inflicted Farsa blow on the wife of the informant as a result of which

she fell down after sustaining bleeding injury. The other accused Narayan Sao inflicted sword blow on the head of his father Shivan Sao and he also fell down sustaining injury and became unconscious. The informant was assaulted by Baijnath Sao with the rod and he sustained fracture in his hand as well as on his head when he attempted to ward off such assault. The other accused Babita Devi and Sumitra Devi with the help of the wife of Mahendra Sao, attempted to strangle his mother. It was further alleged that some of the accused persons removed a box from the room of the informant containing silver jewellery worth Rs. 15,000/- and that Mahendra Sao snatched the silver chain from the neck of the wife of the Informant worth Rs. 2500/-. Their lives could be saved with the intervention of the villagers. The attack on the house of the Informant was given effect to with the concert of all the accused persons. The F.I.R. was instituted against Mahendra Sao, Narayan Sao, Baijnath Sao, wife of Mahendra Sao, Sulakshna Devi, Sumitra Devi & Babita Devi.

4. Learned Counsel for the petitioners submitted that the father of the informant Shivan Sao and the accused Baijnath Sao were full brothers being sons of late Barhan Sao and they had long standing property disputes. The petitioner No. 3 Miss. Sulochana Kumari @ Sulakshna Kumari daughter of the accused Mahendra Sao was a juvenile on the alleged date of occurrence and her date of birth was recorded on 16.9.1991 in the certificate of passing matriculation examination in May, 2007.

5. The police after investigation submitted charge-sheet against Baijnath Sao & Mahendra Sao who were sent up for trial with the requisition to issue warrant of arrest against Premila Devi & Sumitra Devi showing the investigation pending. But at the same time for want of any material during investigation of the case, exonerated the other accused Narayan Sao, Miss. Sulochana Kumari @ Sulakshna Kumari & Babita Devi, petitioners herein, from their criminal liability.

6. The impugned cognizance order dated 14.8.2007 indicates that upon perusal of the case diary with reference to paragraph Nos. 2, 8, 9, 16, 21 and the injury report, the C.J.M. found, prima facie, material against the petitioners as well and took cognizance of the offence u/s 341, 323, 325, 307, 504/34 I.P.C. against all the named accused.

7. The main thrust of the defence was that the C.J.M., Koderma without any protest petition on behalf of the informant and also without according opportunity to the petitioners, took the cognizance of the offence against the settled norms of law. Learned C.J.M., according to the learned Counsel, perhaps lost sight of the fact that the Investigating Officer exonerated the petitioners from their criminal liability finding no materials against them. Section 307 I.P.C. was exclusively triable by the Sessions Judge and by taking the cognizance of the offence as also against the petitioners who were not sent up for trial, learned C.J.M. by the impugned order usurped the power and exercised the jurisdiction of the Sessions Court as contemplated u/s 319 Cr.P.C.

8. Finally, learned Counsel submitted that the order impugned taking cognizance of the offence against the petitioners is illegal which is liable to be set aside. Learned Counsel while concluding his argument pointed out that the petitioner Miss. Sulochana Kumari @ Sulakshna Kumari was minor at the relevant time of alleged occurrence but against her also learned C.J.M. took the cognizance of the offence.

9. Having regard to the facts and circumstances of the case, I find that in the instant case, the stage of taking cognizance of offence by the C.J.M., Koderma was u/s 190(1)(b) of the Code of Criminal Procedure and not the stage of committal proceeding as contemplated u/s 209 Cr.P.C. Admittedly, the jurisdiction u/s 319 Cr.P.C. is vested in the following exigency.

319. Power to proceed against other persons appearing to be guilty of offence.- (1) 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 person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under Sub-section (1) then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of Clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

10. Section 319 gives ample power to the Court to take cognizance and add any person not being sent up and try the accused along with those who were sent up for trial. The power u/s 319 Cr.P.C. can be exercised only if it appears from the evidence adduced during enquiry or trial, the involvement of the person concerned in the offence being enquired into or tried and not at the initial stage when the cognizance taking Court (C.J.M., Koderma herein) exercising his judicial mind after receipt of the charge-sheet u/s 173(2) Cr.P.C.

11. In the instant case, admittedly, it was neither the stage of 319 Cr.P.C. nor of 193 Cr.P.C. On the other hand, learned C.J.M., Koderma in exercise of his jurisdiction u/s 190(1)(b) Cr.P.C. took the cognizance of the offence against the petitioners as well. It would be relevant to observe that the evidence envisaged in Section 319 Cr.P.C. is the evidence tendered during trial or enquiry of the case and the material placed

before the C.J.M. u/s 173(2) Cr.P.C. by the police after investigation of the case, I observe that it was not the stage of 319 Cr.P.C so as to debar the C.J.M. from taking cognizance of the offence on the basis of the materials placed before him which was based upon his subjective satisfaction, finding a prima facie case.

12. In *Minu Kumari and Anr. v. State of Bihar and Ors.* reported in (2008) 4 S.C.C. 359 the Apex Court held that:

When a report forwarded by the police to the Magistrate u/s 173(2)(1) is placed before him several situation arise; the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation u/s 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police u/s 156(3). The position is, therefore, now well settled that upon receipt of a police report u/s 173(2) a Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation had made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers u/s 190(1)(b) and direct the issue of process to the accused.

13. In the facts and circumstances, I find that the learned Counsel for the petitioners failed to show any convincing and legal ground to call for interference in the cognizance order impugned, u/s 190(1)(b) dated 14.8.2007 passed by the C.J.M., Koderma in Markacho P.S. Case No. 10 of 2007 corresponding to G.R. No. 31 of 2007 for the offence under Sections 341/323/325/307/504/34 I.P.C. against the petitioners as well. However, this observation shall not debar the petitioners to raise the issue at the time of framing of charge against them, if so advised, and the petitioner No. 3 Miss. Sulochana Kumari @ Sulakshna Kumari may also raise the point of her being juvenile at the appropriate occasion which shall be decided on its own merit.

14. There being no merit, this petition is accordingly dismissed.