

(2013) 07 JH CK 0027

Jharkhand High Court

Case No: Criminal M.P. No. 58 of 2013

Noor Mohammad, Mustafa
Ansari @ Md. Mustafa and
Sahnaj Khatoon

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: July 2, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 319
- Penal Code, 1860 (IPC) - Section 304B, 306, 34, 498A

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: P.P.N. Roy, for the Appellant;

Final Decision: Disposed Off

Judgement

Rakesh Ranjan Prasad, J.

Heard learned senior counsel for the petitioners and the learned counsel for the State. This application is directed against the order dated 17/09/2012, passed in S.T. No. 263/2010, whereby and whereunder these petitioners were summoned u/s 319 Cr.P.C. to face trial.

2. Mr. Roy, learned senior counsel appearing for the petitioners submits that earlier a case was registered as Hirodih P.S. Case No. 14/2010, against these petitioners and other accused persons for commission of the offence punishable under Sections 498A, 304B /34 of the Indian Penal Code, on the allegation that these petitioners, who happens to be the father-in-law, brother-in-law (Devar) and sister-in-law (Nanad) of the deceased and also the other accused persons, committed dowry death, but the police, during investigation, did not find the case of dowry death, rather did find the case as that of Section 306 of the Indian Penal Code and that too nothing was found against these petitioners. Hence, no charge sheet

was submitted against these petitioners, rather the charge sheet was submitted against other accused persons, who were related as husband and mother-in-law of the deceased. Accordingly, charge was framed u/s 306 of the Indian Penal Code and they were put on trial. In course of trial, 11 witnesses were examined and then an application u/s 319 Cr.P.C. was filed on behalf of the prosecution to summon these petitioners. That application was allowed by recording that the name of these petitioners is there in the written report of the informant and also in the subsequent statements, recorded u/s 161 Cr.P.C. and also on oath before the Court. That order is under challenge.

3. Mr. Roy, learned senior counsel appearing for the petitioners submits no doubt that it is true that even the person, who has not been charge sheeted, can be summoned u/s 319 Cr.P.C., to face the trial if certain evidence showing culpability on the part of that person comes in, but certainly not on the basis of the statements made in the FIR and the statement of the witnesses recorded u/s 161 Cr.P.C. But, here the Court has taken into account the statements made in the FIR and also the statements of the witnesses, made u/s 161 Cr.P.C., which is quite illegal. However, it was submitted that the Court apart from those materials has also referred to about the evidence, but it is quite vague as it has simply been recorded that on oath there appears to be evidence against the petitioners.

4. In such situation, when the Court has not recorded that the evidence is as such which may fasten the petitioners with the liability of the offences, the order taking cognizance is fit to be set aside. Learned senior counsel further submits that on the charge of committing offence u/s 306, the other accused persons have been put on trial, but no evidence is there against the petitioners with respect to commission of the offence u/s 306 IPC and on that account also the Court has committed illegality for summoning these petitioners to face trial.

5. Having heard learned counsel appearing for the parties and on perusal of the records, it does appear that the Court, while summoning these petitioners, has taken into account the statements made in the FIR and also the statements made by the witnesses u/s 161 Cr.P.C., which cannot be taken into account for summoning a person u/s 319 Cr.P.C. to face trial. However, at the same time, the Court has also recorded that some materials are there in the evidences of the witnesses, but those evidences have not been dealt with and, therefore, the order can be said to be a cryptic one. Accordingly, the order impugned is hereby set aside and the matter is remanded back to the Court below for a fresh consideration as to whether evidences are there against the petitioners for putting them on trial u/s 319 Cr.P.C. Accordingly, this application stands disposed of.