
(2006) 05 JH CK 0019

Jharkhand High Court

Case No: None

Shyamdeo Modi

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: May 16, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 319
- Penal Code, 1860 (IPC) - Section 120B, 34, 364A

Citation: (2006) CriLJ 4195 : (2006) 3 EastCriC 106 : (2006) 2 AIRJharR 49 : (2007) 5 RCR(Criminal) 342

Hon'ble Judges: Amareshwar Sahay, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Amareshwar Sahay, J.

Heard the parties.

2. The prayer of the petitioner in this writ application is to quash the order dated 14-7-2005 passed by the Additional Sessions Judge, VIII, Fast Track Court, Giridih whereby and whereunder, the learned Trial Court, in exercise of the powers u/s 319 of the Criminal Procedure Code allowed the prayer of the prosecution to summon Shyamdeo Modi i.e. the present petitioner to stand trial along with other accused persons on the ground that there was ample evidence on the record to show that Shyamdeo Modi was a man behind the curtain and had played a vital role in commission of the alleged crime and Shyamdeo Modi appeared to be guilty of offence of kidnapping of the minor boy Amit Kumar alias Tinku.

3. The facts which are relevant for the purpose of this application are that one Bhagwan Lal Burnwal lodged the First Information Report on 5.2.2004 regarding

kidnapping of his minor son Amit Kumar alias Tinku, aged about 11 years. The said F.I.R. was registered u/s 364-A of the Indian Penal Code against unknown persons. After completion of the investigation, the charge-sheet u/s 364-A/120-B/34 of the Indian Penal Code was submitted by the Police against six persons namely Bablu Modi, Laxman Modi, Santosh Kumar, Ashok Mandal, Gaurav Mukherjee and Lalit Sen. Thereafter, the case was committed to the Court of Session and in course of Trial, out of five charge-sheet witnesses, four were examined including the victim boy Amit Kumar alias Tinku who, in course of investigation, was recovered.

4. It is after examination of the victim boy Amit Kumar alias Tinku, a petition u/s 319 Cr.P.C. was filed on behalf of the prosecution to summon Shyamdeo Modi (petitioner herein) to stand trial because from the evidence during trial, it appeared that Shyamdeo Modi had played vital role in kidnapping the minor boy Amit Kumar alias Tinku for ransom.

5. By the impugned Order dated 14.7.2005, as stated earlier, the Trial Court allowed the said petition of the prosecution and issued summons against Shyamdeo Modi directing him to appear and face trial. It is against this order, the petitioner has filed the present application for quashing.

6. Mr. Mahesh Tiwari, learned Counsel for the petitioner has vehemently argued that the impugned order summoning the petitioner to face trial in exercise of the powers u/s 319 Cr.P.C. was absolutely bad in law in view of the law settled by the Hon"ble Supreme Court. Elaborating his arguments, Mr. Mahesh Tiwari submitted that when the trial was at its fag end, then at that stage, the Trial Court could not and should not have exercised the powers u/s 319 Cr.P.C. for summoning the accused to face trial who was neither named in the F.I.R nor was he charge-sheeted after investigation of the Police. In support of this submission, he relied on the decision of the Apex Court in the case of [Michael Machado and Another Vs. Central Bureau of Investigation and Another](#), and the decision of the single Bench of this Court in the case of Sahdeo Rai v. State of Jharkhand reported in 2005 (2) E Cri C 449 : AIR 2006 Jhar R 209. It was further submitted that the powers u/s 319 Cr.P.C. can be exercised only on the existence of the compelling reasons.

7. On the other hand. Mr. Rajiv Ranjan Mishra, learned G.P. II has submitted that the powers u/s 319 Cr.P.C. can be exercised by the Courts at any stage before the judgment if during the trial, sufficient evidence has come on record against the person who was not an accused in the said case, regarding his involvement in the offence alleged. Even if, a person whether he was discharged at an earlier stage or a prosecution was quashed against him at an initial stage, can also be summoned by the Trial Court if, in the opinion of the Trial Court, the said person appears to be involved in commission of the offence alleged on the basis of the statement of the prosecution witnesses examined during the trial. In support of his submissions, Mr. Rajiv Ranjan Mishra, learned G.P. II relied upon a decision of the Hon"ble Supreme Court in the case of [Javed Ahmed Abdulhamid Pawala Vs. State of Maharashtra](#), and

a decision of this Court in the case of Jamshed Hussain and Anr. v. State of Jharkhand and Anr. reported in 2004 (4) JLR 699.

8. Section 319 Cr.P.C. speaks about the power to proceed against other persons appearing to be guilty of offence which reads as under:

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 witnesses reheard;

(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.

9. From a bare perusal of this provisions of Section 319 of Cr.P.C. it appears that this power can be exercised by the Trial Court at the stage of examination of the witnesses during trial and if the evidence adduced by the prosecution is pointed out against any person who is not being tried, then the Trial Court may proceed against such person for the offence which he appears to have committed. This power is no doubt discretionary and has to be exercised judicially. In the decision cited by the petitioner of the Apex Court, in the case of [Michael Machado and Another Vs. Central Bureau of Investigation and Another](#), it has been held that the basic requirements for Invoking Section 319 Cr.P.C. is that the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First that some other person who is not arraigned as an accused in that case has committed the offence. Second, that for such offence, that other person could well be tried along with the already arraigned accused. It is not enough that the Court entertained some doubts from the evidence about the involvement of another person in the offence.

10. In the said decision, it has also been held that 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.

11. The Hon'ble Supreme Court, in the case of Dr. S.S. Khanna v. Chief Secretary Patna and Anr. reported in AIR 1983 SC 595 has held as follows (Para 13)

that a plain reading of Section 319(1) which occurs in Chapter XXIV dealing with general provisions as to inquiries and trials, clearly shows that it applies to all the Courts including a Sessions Court and such a Sessions Court will have the power to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused,...

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 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.

12. The Hon'ble Supreme Court, in the case of [Michael Machado and Another Vs. Central Bureau of Investigation and Another](#), has not held that such power u/s 319 Cr.P.C. cannot and should not be exercised at the far end of the trial rather the Hon'ble Supreme Court in the case of Dr. S.S. Khanna v. Chief Secretary, Patna and Anr. (supra) has held that "if the prosecution at any stage (Emphasised by Court) produced evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceeding have been quashed have also committed offence, the Court may take cognizance against them and try them along with other accused. But, of course, this power has to be exercised sparingly and only for the compelling reasons."

13. This Court also, in the case of Jamshed Hussain and Anr. v. State of Jharkhand and Anr. (supra) has held that u/s 319 Cr.P.C. the persons other than the accused persons who are facing trial, can be tried together with those accused who were already facing trial. The exercise of the power u/s 319 Cr.P.C. is wholly dependent upon the evidence. which comes during the trial, from which, it may appear that such person, other than the accused, was also involved in commission of the offence.

14. In view of the aforesaid discussions, the submissions of Mr. Mahesh Tiwari that the power u/s 319 Cr.P.C. cannot and should not to be exercised at the fag end of the trial, cannot be accepted and hence rejected.

15. Now, coming to the facts of the present case, from the impugned order, I find that the learned Trial Court passed the impugned order after considering the following evidence adduced during trial which is being reproduced hereinbelow:

On perusal of the evidence of P.W. 4 Bhagwan Lal Bumwal who is the informant of this case it appears that Shyam Deo Modi has called his brother Madan Mohan on 11.2.2004 giving telephonic message and at Atka he had taken Rs. 1,21,000/- from the informant in presence of his brother Madan Lal for bringing back the kidnapped boy. Again the rest witnesses P.W. 3 Madan Lal Modi has also said in his evidence in para 3 that he has received a telephonic message on 5.2.2004 in the evening in which a ransom of Rs. 4 lacs was demanded from him by someone. He has further deposed that after five minutes of the said telephone Shyamdeo Modi who happens to be the uncle of Madan Lal Modi came to him and asked him whether he has received any telephonic message, when he answered in negative then Shuyamdeo Modi told him that of course he has received a telephonic message in which ransom of Rs. 4 lacs has been demanded. He further told him to arrange the money, demanded, he will bring the boy.

and then, on the perusal of the evidence on record, he found that there was ample evidence to show that Shyamdeo Modi was also a man behind curtain and had played vital role in commission of the alleged crime. Shyamdeo Modi appears to be guilty of offence of kidnapping of the alleged minor boy Amit Kumar alias Tinku.

16. Therefore, in my view, the learned Trial Court applied his judicial mind and on consideration of the evidence adduced during trial, came to the aforesaid conclusion and therefore, he was perfectly justified in summoning the petitioner to stand trial as the evidence adduced by the prosecution during trial clearly indicated that the petitioner had a vital role to play in kidnapping of the minor son of the informant for ransom.

17. In this view of the matter, I do not find any illegality or infirmity in the impugned order. Accordingly, having no merit in the writ application, the same is dismissed.