

(2005) 01 JH CK 0012

Jharkhand High Court

Case No: Criminal M.P. No. 883 of 2004

Rakesh Kumar Choudhary @
Rakesh Choudhary

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Jan. 25, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 319
- Penal Code, 1860 (IPC) - Section 201, 302

Citation: (2005) CriLJ 2314 : (2005) 4 JLR 470 : (2005) 3 JCR 440 : (2005) 2 EastCric 221 :
(2005) 1 BLJR 911 : (2005) 31 AllIndCas 266

Hon'ble Judges: S.J. Mukhopadhaya, Acting C.J.

Bench: Single Bench

Advocate: P.P.N. Roy and Praveen Kumar, for the Appellant; A.K. Chaturvedi, APP, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.J. Mukhopadhaya, A.C.J.

1. This application has been preferred by the petitioner for quashing the order dated 16th July, 2004, passed in Sessions Trial No. 54 of 2002, whereby and whereunder, the learned Additional Judicial Commissioner, Ranchi, while passed the order, impleading the petitioner as an accused in the above-noted case u/s 319 of the Code of Criminal Procedure, has ordered him to face trial along with the other accused and has further issued non-bailable warrant of arrest against him for his appearance.

2. Brief fact of the case is that an FIR was instituted on the basis of the fard beyan of one Prabhu Bedia dated 14th May, 2001, wherein the informant (Prabhu Bedia)

alleged that his son Ram Charan Bedia was working as Security Guard-cum-Driver under Rakesh Choudhary, Builder, D.V. Palace, Ranchi and along with him Rajesh Bedia @ Rashoraj Bedia, Jitu Bedia, Haricharan Bedia and Ajay Karmali were/are also working as security Guard-cum-Driver. It has been alleged that one Rati Kant Pahan, who was earlier working with Rakesh Choudhary, had left the job about a month before and Chaita Bedia @ Shankar Bedia, who was another employee, had also left the job 2 to 4 days back. Rati Kant Pahan had told Chatrapati Sahi about 25 days back that Chaita Bedia @ Shankar Bedia had asked him to commit murder of Ram charan Bedia, Sadhu Bedia and Ratan Bedia to which he (Rati Kant Pahan) did not agree and for the said reason he got him removed from service. In the FIR it has been further alleged that Ram Charan Bedia was missing since 28th April, 2001 when he had gone along with Chaita Bedia @ Shankar Bedia. Later on, his dead body was recovered near Sahubera. The informant raised suspicion that his son was murdered by Shankar @ Chaita, Rakesh Choudhary, Kaleshwar Bedia and Suraj Bedia. Accordingly, First Information Report was lodged at Sikidiri Police Station against four persons wherein, the petitioner was also named as an accused. After investigation, police submitted charge-sheet only against Chaita Bedia. The police did not sent-up other three persons for trial, who were named in the First Information Report, including the petitioner. No charge-sheet was submitted against those three, including the petitioner.

3. It is submitted on behalf of the petitioner that the learned Court below after submission of the charge-sheet and final report, submitted in favour of the petitioner, took cognizance of the offence u/s 302/201 of the Indian Penal Code only against Chaita Bedia @ Shankar Bedia vide order dated 17th October, 2001 and transferred the case to the Court of learned Sub Divisional Judicial Magistrate, Ranchi. The learned Sub Divisional Judicial Magistrate, Ranchi, thereafter, committed the case to the Court of Sessions for trial of Chaita Bedia @ Shankar Bedia only. During trial, altogether 13 witnesses were examined by the prosecution. After closure of evidence, statement of accused Chaita Bedia @ Shankar Bedia was recorded u/s 313 of the Code of Criminal Procedure and the case was also heard on merit and was fixed for judgment.

4. Grievance of the petitioner is that the trial Court suddenly on 16th July, 2004, when the case was fixed for judgment, passed an order u/s 319 of the Code of Criminal Procedure, impleading the petitioner as an accused in the said case and ordered him to face trial along with other sole accused, who was already facing trial.

5. Counsel for the petitioner submitted that the trial Court on mere suspicion that the petitioner had also committed the offence, without any evidence, passed . the order u/s 319 of the Code of Criminal Procedure. According to him, it is against law. It has been further submitted that none of the witnesses has stated anything against the petitioner in his evidence with regard to commission of offence but he (the petitioner) has been impleaded as an accused merely on suspicion.

6. u/s 319 of the Code of Criminal Procedure, the trial Court has jurisdiction to proceed against a person, appearing to be guilty of the offence, if, in course of enquiry or trial of an offence, it appears from the evidence that the person, not being an accused, has committed any offence for which such person could be tried together with the accused. In such a situation, the Court can proceed against such person for the offence, which he appears to have committed.

It is true that only on mere suspicion no one can be dragged to face trial unnecessarily and for such suspicion, Section 319 of the Code of Criminal Procedure can not be exercised, in absence of a finding that person, summoned, has committed the offence. However, if the Sessions Judge after recording the evidence of the witnesses is of the opinion that there are sufficient materials on record about the participation of a person, he may implead any person as an accused and that can not be said to be an infirmity or illegality.

7. In the present case, as noticed above, 13 witnesses have been examined by the prosecution. The statement of the sole accused u/s 313 of the Code of Criminal Procedure was also recorded and the case was fixed for judgment. But before delivery of the judgment, on 16th July, 2004 the learned Additional Judicial Commissioner, Ranchi, noticed that the informant in his First Information Report had also alleged "the hands of one Rakesh Choudhary (petitioner herein) in committing the murder of his son. In his evidence, the informant has also taken the name of Rakesh Choudhary, alleging his complicity in the aforesaid murder. There are witnesses, who have also whispered in their evidence that prior to his death, the deceased had gone to the house of Rakesh : Choudhary and with whom he (the deceased) had also gone to Hazaribagh. From the evidence, it further transpires that just before the occurrence, the deceased was seen in the car of Rakesh Choudhary (petitioner), which was going towards the dam and when the car was returning from the dam side, deceased was not there in the vehicle rather accused Rakesh Choudhary was found along with some others in the said car. Having noticed the aforesaid facts and circumstances and the evidence on record, the learned Additional Judicial Commissioner, Ranchi, was of the opinion that Rakesh Choudhary, although not sent up in the said case, for the ends of justice, he should also be tried together with the original accused.

8. In view of the aforesaid facts as recorded above and the finding of the learned Additional Judicial Commissioner, Ranchi, I find no case to be made out to set aside the order dated 16th July, 2004, passed in Sessions Trial No. 54 of 2002. There being no merit, this application is hereby dismissed.