(2009) 09 JH CK 0028

Jharkhand High Court

Case No: None

Noor Johan Bano		APPELLANT
	Vs	
The State of Jharkhand and Others		RESPONDENT

Date of Decision: Sept. 8, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 319
- Penal Code, 1860 (IPC) - Section 307, 325, 34, 341

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Narendra Nath Tiwari, J.
The petitioner has prayed for quashing the order dated 10.12.2007 passed in Cr. Revision No. 157 of 2007, whereby learned Sessions Judge has dismissed the petitioner''s Cr. Revision and upheld the order dated 12.9.2007 passed by Juvenile Justice Board, Dhanbad in G.R. Case No. 669 of 2005 rejecting informants application u/s 319 Cr.P.C. for summoning other accused for trial.

2. The short fact of the case is that on the fard-beyan of the informant given in the Bokaro General Hospital on 9.6.2035 Chas P.S. Case No. 103/05 was registered under Sections 341/325, 307/34 I.P.C. against several persons.

3. After investigation the Police did not find sufficient material against the persons who are sought to be summoned u/s 319 Cr.P.C. for trial. The chargesheet was filed on against Raja Babu who was a juvenile. The case was then referred to the Juvenile Board and proceeded against the sole accused Raja Babu, who was a minor. According to the petitioner, in course of trial certain materials have come, which according to the petitioner, are sufficient to make out a prima-facie case of complicity against the persons who have

been sought to be summoned.

4. On that basis a petition u/s 319 Cr.P.C. was filed by the petitioner praying for summoning those other persons.

5. Learned Juvenile Board considered the same and held that there was no sufficient material against the persons, sought to be summoned for trial by the informant. The petition was rejected.

6. The petitioner challenged the said order in revision before the Sessions Judge, Bokaro. The same was registered as Cr. Revision No. 157 of 2007. Learned Sessions Judge, Bokaro after hearing the parties dismissed the revision by the impugned order holding that the Juvenile Board is concerned with the trial of juvenile accused against cognizance was taken. He further held that when the cognizance was taken only against the juvenile refusing to take cognizance against other accused persons, the petitioner did not challenge the same. He did not find any merit in the point of the petitioner.

7. In this petition, the petitioner has assailed the order of learned Sessions Judge Mainly on the ground that material has come in course of trial against the said persons, who are not accused, but learned Juvenile Board has erroneously refused to summon those persons u/s 319 Cr.P.C. which provides for summoning such persons for taking trial together with the other accused persons. The Juvenile Board as also Learned Sessions Judge failed to appreciate the same and erroneously refused the petitioner''s prayer.

8. Learned Counsel appearing on behalf of the opposite parties submitted that there is absolutely no error in the impugned order the petitioner''s prayer seeking issuance of summons against other persons for trial along with the juvenile is wholly misconceived. Learned revisional court has rightly held that the Juvenile Board can hold trial of the case of only juvenile and other persons, who are admittedly major, cannot be tried together. The provision u/s 319 Cr.P.C. is not applicable in the case.

9. I have heard learned Counsel for the parties and considered the facts and materials on record. The admitted case is that the informant in fard-beyan had also named the persons as accused who are sought to be summoned. Police investigated the case and did not find any material against those accused persons. Chargesheet was submitted only against one Raja Babu, who was a juvenile. The informant did not challenge the said order. The same allegation is said to be restated in the evidence of the informant in course of his examination as a witness in the case before the Juvenile Justice Board. Petition was filed u/s 319 Cr.P.C. on that basis, seeking the other persons to be summoned for taking trial.

10. Section 319 Cr.P.C. reads as follows:

319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry info, or trial of, an offence, it appears from the evidence that any person not being the accused ha :, committed any

offence for which such person could be fried 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 fhe 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.

11. On plain reading of the said provision it is evident that the Court has discretionary power to summon any other persons who are not the accused in the case to be tried together with the accused persons in that case.

12. Even if there is some material against other persons, looking to the circumstances of the case, the court has discretion to refuse to call the person to take trial and trouble the accused by commencing the trial afresh and recalling and rehearing the prosecution witnesses, already examined and discharged.

13. In the instant case the persons sought to be summoned are major and cannot be tried together with. The juvenile. Learned Juvenile Board has also specifically held that no sufficient, cogent and believable ground has appeared in course of trial for summoning the other persons to be tried along with the juvenile accused. The points, which have been taken by the petitioner have also been considered by the revisional court and the same has been properly dealt with. I find no illegality or infirmity in the order of learned Sessions Judge.

14. For the reasons aforesaid, I find no ground made out to interfere with the impugned order, this petition is, accordingly dismissed.