

**(2013) 07 JH CK 0105****Jharkhand High Court****Case No:** Criminal Revision No. 397 of 2013

Bille Paji @ Jarnail Singh @ Bellu

Page

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

**Date of Decision:** July 11, 2013**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 319
- Penal Code, 1860 (IPC) - Section 120B, 302, 34

**Citation:** (2013) 3 AJR 549**Hon'ble Judges:** Harish Chandra Mishra, J**Bench:** Single Bench**Advocate:** Prabhat Kumar Sinha, for the Appellant;**Final Decision:** Disposed Off**Judgement**

Harish Chandra Mishra, J.

Heard learned counsel for the petitioner and learned A.P.P. for the State. The petitioner is aggrieved by the order dated 4.1.2013 passed by learned Sessions Judge, Jamshedpur, in S.T. No. 131 of 2011, whereby in exercise of power u/s 319 of the Cr. P.C., the Court below has found that there are materials to proceed against the petitioner and as such, directed to issue summons to the petitioner for facing the trial. It also appears that since the order was passed at the concluding stage of trial, the Court below split up the trial of the petitioner and proceeded with the trial against other accused persons, who were facing the trial.

2. The petitioner has been made accused in Telco (Birsa Nagar) P.S. Case No. 119 of 2010 corresponding to G.R. No. 1015 of 2010, which was instituted for the offence under Sections 302, 120B, 34 of the Indian Penal Code. In the FIR, there is allegation against the petitioner that he had taken away the deceased along with him and subsequently, the dead body of the deceased was found. Other persons were also

named in the FIR, and the case was instituted and investigation was taken up.

3. It appears that after investigation, charge sheet was not filed against the petitioner and accordingly, the petitioner was not put to trial. After all the witnesses were examined in the trial Court, an application was filed by the prosecution u/s 319 of the Cr. P.C., stating that the witnesses examined by the prosecution had stated that the deceased was taken away from his house by this petitioner and subsequently, the dead body of the deceased was found. Accordingly, there was sufficient material against the petitioner also to put him on trial. The Court below has discussed the evidence of the prosecution witnesses, who have deposed that the deceased was taken away from his house by this petitioner and subsequently, his dead body was found. Some of the witnesses have also stated that the deceased was taken away by the petitioner and one Govind Lohar and thereafter the dead body was found. On the basis of these materials, the Court below has issued summons against the petitioner for facing the trial, finding that there was sufficient material on record against the petitioner also.

4. Prima facie, I do not find any illegality in the impugned order passed by the Court below, as the same is based on the evidence on record, which shows that the deceased was taken away by the petitioner and thereafter, dead body of the deceased was found.

5. Learned counsel for the petitioner has, however, submitted that the trial against other co-accused persons including the said co-accused Govind Lohar had proceeded, which has ended in the acquittal of all the accused persons who had faced the trial, by the Judgment dated 29th January 2013, passed by learned Sessions Judge, Jamshedpur in S.T. No. 131 of 2011. The Judgment passed by the Trial Court has been brought on record as Annexure-3. Learned counsel accordingly, submitted that since all the accused persons, who had faced the trial, including the co-accused Govind Lohar, against whom, there was same allegation as against the petitioner, have been acquitted after trial, there is no chance of the trial ending in conviction and the petitioner shall be unnecessarily harassed in the criminal trial. Learned counsel has accordingly, submitted that taking into consideration the subsequent Judgment passed by the Court below, the impugned order may be set aside.

6. Learned A.P.P. for the State has opposed the prayer.

7. In the facts of this case, I find that there is no illegality in the impugned order passed by the Court below in summoning the petitioner for facing the trial on the basis of the evidence on record. The petitioner may have a good case for discharge in view of the subsequent Judgment of the Trial Court, but the petitioner has not filed any application in the Court below for discharge and the present revision has been filed by the petitioner directly against the order dated 4.1.2013, presumably, under the threat that the petitioner may be taken into custody, once he surrenders

in the Court below.

8. In the facts of the case, I direct the petitioner to approach the Court below first, with the proper application for discharge on the basis of subsequent Judgment of the Trial Court, and if the petitioner appears in the Court below and files his application for bail, the same shall be favourably considered by the Trial Court, in view of the Judgment dated 19th January 2013, passed in S.T. No. 131 of 2011, whereby the co-accused persons, including Govind Lohar, have been acquitted after trial. If the petitioner files the application for discharge, the same shall be disposed of by the Court below in accordance with law.

9. With these observations and directions, this revision application is disposed of. Let this order be communicated to the Court concerned through FAX at the cost of the petitioner.