Md. Sadique and Others Vs State of Bihar

Court: Patna High Court

Date of Decision: Sept. 27, 2004

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 161, 202, 319, 319(1)
Negotiable Instruments Act, 1881 (NI) â€" Section 138, 139

Citation: (2004) 4 PLJR 411

Hon'ble Judges: M.L. Visa, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.L. Visa, J.
Heard. This application by petitioners has been filed for quashing the order dated 19.1.2004 passed by Fast Track Court

No. 5, Purnea in Sessions Trial No. 810 of 2003 by which petitioners have been summoned u/s 319 of Code of Criminal Procedure (In short,

Cr. P.C"") to face the trial.

2. The case of petitioners is that they are not named in the first information report in which names of twelve persons alongwith five to six unknown

persons have been mentioned inspire of the fact that they happen to be co-villagers of informant. Their further case is that P.Ws. 1 to 3, on whose

evidence, they have been summoned u/s 319 of Cr.P.C. have not mentioned their complete address in their evidence and their address has been

supplied to Court by prosecution (Annexure-5).

3. Learned counsel of petitioners submits that impugned order shows that names of petitioners have figured in the evidence of three witnesses,

namely, Abdul Hakim, Abdul Khabir and Md. Muzaffar but during the course of investigation, they did not whisper the names of petitioners when

their statements were recorded u/s 161 of Cr. P.C. He further submits that impugned order, summoning the petitioners to face trial, will result in

abuse of process of the Court. He has further argued that the Court below has failed to lake duo care and caution and has not examined the

materials available on record in right perspective and has acted in mechanical manner without following the settled principles of law while allowing

the prosecution''s application u/s 319 of Cr. P.C. and it has failed to lake into consideration that informant is co-villager of petitioners and he has

given every details of alleged occurrence in first information report but has not named the petitioners. The learned counsel of petitioners, by relying

upon two decisions, both by Bench of Single Judge of this Court, in the cases of Sheoji Prasad Vs. The State of Bihar and Debjit Basu, and

Sabrun Khatoon @ Sabrun and others vs. State of Bihar and others [2002(2) PLJR 739] and a decision of Supreme Court in the case of

Shashikant Singh vs. Tarkeshwar Singh and another [2002(3) PLJR (SC) 21], has challenged the impugned order. In the case of Shashikant Singh

vs. Tarkeshwar Singh and another (supra), the Supreme Court has held that proceeding against the persons summoned u/s 319(1) of Cr. P.C. are

required to be commenced afresh and all the witnesses have to be examined afresh. The decision is not on the point involved in this case. The other

two cases which are decisions of two different Benches of Single Judge of this Court, no doubt order summoning the petitioners u/s 319 of

Cr.P.C. was set aside but in both the cases, facts of respective cases were also taken into consideration. In the case of Sabrun Khatoon @

Sabrun vs. State of Bihar and others (supra) in which four female members were summoned u/s 319 of Cr.P.C., the learned Single Judge found it

improbable that tour female members will join four male persons of their family to assault the complainant who was going to attend his mother and

was alone. In the case of Sheoji Prasad vs. State of Bihar and another (supra) in which petitioner was summoned u/s 319 of Cr.P.C. in a case u/s

139 of Negotiable instruments Act, 1881, the plea of petitioner that, admittedly, the cheque was not issued by him nor any demand of money by

opposite party was made to him and no notice as required u/s 138 of Negotiable Instruments Act was also considered alongwith other materials

and the order was set aside. The facts of the present case, which is a case of murder, are quite different because as per evidence recorded in this

case during trial, allegation against the persons named in the first information report and the petitioners is that they assaulted the deceased, Sayeed

Ali and Md. Sanaullah. The impugned order shows that after commitment when the case was put on trial, three witnesses on behalf of prosecution

were examined who, supporting the case of prosecution, beside the persons named in the first information report named the petitioners also and,

thereafter, at the prayer of prosecution, the Court below issued summons against the petitioners for appearing in the case and facing the trial. The

grievance of the petitioners is that informant, who is their covillagers, did not name them in first information report and the witnesses, whose

evidence has been recorded u/s 161 of Cr.P.C., did not name them. It is further argued that out of the three witnesses, one who is PW 2, has not

named the petitioners. From the copy of depositions of three prosecution witnesses (Annexure-2 series) I find that it is a fact that PW2 did not

name the petitioners but so far evidence of PWs. 1 and 3 is concerned, they have named the petitioners besides other persons in their evidence.

The Court below, after exercising the powers u/s 319(1) of Cr.P.C., has issued summons to the petitioners. Section 319(1) of Cr.P.C. reads as

follows:

Where, in the course of any enquiry 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.

4. A bare reading of Section 319(1) of Cr.P.C. shows that in the course of any enquiry 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 with the accused, the Court may proceed

against him for the offence which he appears to have committed. From the provisions of Section 319(1) of Cr.P.C., it is clear that not only in the

course of a trial but in the course of any enquiry also, the Court may proceed against any person against whom there is evidence that he has

committed the offence. This enquiry may be an enquiry u/s 202 of Cr.P.C. Normally, an enquiry u/s 202 of Cr.P.C. starts against those accused or

accused persons who are named in complaint petition. If a person is not named in the complaint petition but from evidence recorded during inquiry

u/s 202 of Cr.P.C. if it appears to Court that he has committed any offence, he may be summoned u/s 319(1) of Cr.P.C. to face trial alongwith the

accused or accused persons named in the complaint petition. Section 319(1) of Cr.P.C. does not make it obligatory that for summoning a person

under this provision, his name must figure in the complaint petition. In the case of Dr. S.S. Khanna Vs. Chief Secretary, Patna and Another, , it has

been held that ""Even when an order of Magistrate declining to issue process u/s 202 is confirmed by higher Court, the jurisdiction of the Magistrate

u/s 319 remains unaffected if other conditions are satisfied."" One may argue that case of those persons against whom a Magistrate holds enquiry

u/s 202 of Cr.P.C. and declines to issue process stands on different footings than the case of those persons who are neither named in the complaint

petition nor in first information report and whose names appear for the first time in evidence because in the former case, name of accused persons

not summoned at least appear in the complaint petition. In my opinion, the persons, whose names appear in complaint petition but who have not

been summoned after inquiry u/s 202 of Cr.P.C. are at least armed with a plea that a Magistrate applying his judicial mind after holding enquiry u/s

202 of Cr.P.C. did not find any material for issuing summons to them. If such persons subsequently can be summoned if it appears from the

evidence recorded in trial that they committed an offence, there is no bar for summoning the persons whose names appear for the first time in

evidence that they committed an offence. In the case of Kishun Singh and Others Vs. State of Bihar, 2it has been held as follows:

On a plain reading of sub-section (1) of Section 319 there can be no doubt that it must appear from the evidence tendered in the course of any

enquiry or trial that any person not being the accused has committed any offence for which he should be tried together with the accused. This

power, it seems clear to us, can be exercised only if it so appears from the evidence at the trial and not otherwise. Therefore, this subsection

contemplates existence of some evidence appearing in the course of trial wherefrom the Court can prima facie conclude that the person not

arraigned before it is also involved in the commission of the crime for which he could be tried with those already named by the police. Even a

person who has earlier been discharged would fall within the sweep of the power conferred by Section 319 of the Code. Therefore, stricto sensu,

Section 319 of the Code cannot be invoked in a case like the present one where no evidence has been led at a trial wherefrom it can be said that

the appellants appear to have been involved in the commission of the crime alongwith those already sent up for trial by the prosecution.

But then it must be conceded that Section 319 covers the post cognizance stage where in the course of an enquiry or trial the involvement or

complicity of a person or persons not named by the investigating agency has surfaced which necessitates the exercise of the discretionary power

conferred by the said provision. Section 319 can be invoked both by the Court having original jurisdiction as well as the Court to which the case

has been committed or transferred for trial. The sweep of Section 319 is, therefore, limited, in that, it is an enabling provision which can be invoked

only if evidence surfaced in the course of an enquiry or a trial disclosing the complicity of a person or persons other than the person or persons

already arraigned before it. If this is the true scope and ambit of Section 319 of the Code, the question is whether there is any other provision in the

Code which would entitle the Court to pass a similar order in similar circumstances. The search for such a provision would be justified only on the

premise that section 319 is not exhaustive of all post cognizance situations. Now, As pointed out earlier, Section 319 deals with only one situation,

namely, the complicity coming to light from the evidence taken and recorded in the course of an enquiry or trial. This may happen not merely in

cases where despite the name of a person figuring in the course of investigation the investigating agency does not send him up for trial but even in

cases where the complicity of such a person comes to light for the first time in the course of evidence recorded at the enquiry or trial. Once the

purport of Section 319 is so understood it is obvious that the scope of its operation or the area of its play would also be limited to case where after

cognizance, the involvement of any person or persons in the commission of the crime comes to light in the course of evidence recorded at the

enquiry or trial. Thus the section does not apply to all situations and cannot be interpreted to be repository of all power for summoning such person

or persons to stand trial alongwith others arraigned before the Court.

(Emphasis added)

5. The petitioners are challenging the impugned order on the ground that they are not named in the first information report inspite of the fact that

they are co-villagers of informant and P.Ws. 1 and 3, who have named them in their evidence, did not name them when they were examined by

police during investigation. Merely on these facts, it cannot be said that petitioners cannot be summoned u/s 319(1) of Cr.P.C. inspite of the fact

that from evidence recorded during trial, it appears that they have committed an offence for which they may be tried alongwith the accused persons

already on record because Section 319(1) of Cr.P.C. does not lay down that apart from evidence recorded during trial showing the commission of

offence by a person, some other ground is also required for summoning him to face the trial. Besides this, at this stage, it cannot be conclusively

said that prosecution witnesses who have named the petitioners during their evidence in trial had not named them in their statements before

Investigating Officer during investigation. The court will come to this finding only after the examination of Investigating Officer. Not naming the

petitioners in first information report and by prosecution witnesses in their examination during investigation are the facts which will be considered by

the trial Court at the time of passing final order in the case. This is not the stage to give any finding on these points because doing so will amount

prejudging the trial.

6. The next argument advanced on behalf of petitioner is that parentage and addresses of petitioners were supplied by prosecution and witnesses

examined during trial, have not given the parentage and addresses of petitioners is without any force because from the prosecution witnesses

(Annexure-3 series). I find that some witnesses have given the parentage of some of the petitioners. It is the own case of petitioners that they are

co-villagers of informant and they have not come up with the plea that in their village, there are some other persons having the same names as that

of petitioners and PW 3, in his evidence, has stated that all petitioners are having their residences about a distance of 200 to 250 yards suggesting

that they are neighbours of informant. In the result, I find no merit in this application which is, accordingly, dismissed.