
Bino Yadav @ Bindeshwari Yadav Vs State of Bihar and Another

Criminal Rev. No. 497 of 2007

Court: Patna High Court

Date of Decision: Jan. 23, 2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 151#Criminal Procedure Code, 1973 (CrPC) â€”
Section 161, 190, 204, 319, 319(1)#Penal Code, 1860 (IPC) â€” Section 147, 148, 149, 323,
324

Citation: (2009) 2 PLJR 368

Hon'ble Judges: Samrendra Pratap Singh J., J

Bench: Single Bench

Advocate: Kanhaiya Prasad Singh and Neeraj Kumar, for the Appellant; Suresh Pd. Singh No.
1, Shailendra Kr. Singh, Vitesh Kr. Singh for the Opp. Parties and Mrs. Indu Bala Pandey for
the State, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Samrendra Pratap Singh, J.

The instant revision application is directed against the order dated 20.3.2007 passed by the Additional

Sessions Judge. Fast Track Court-VI, Saharsa in Sessions Trial No. 82 of 2002 whereby he allowed the petition dated 20.7.2006
filed by the

prosecution u/s 319 Cr.P.C. and ordered to issue non-bailable warrant of arrest against the petitioner to face trial. The petitioner
assails the

aforesaid order on the ground that it amounts to reviewing and recalling its earlier order dated 18.1.2006 on the same set of
evidence not

summoning the petitioner to face trial. Before I address the main ground taken by the petitioner in support of his contention, it
would be necessary

to notice the facts of the case in brief. One Chandeshwari Mukhiya, Opposite Party No. 2, is the informant of Sonebarsa P.S. Case
No. 23 of

2000 under Sections 147, 148, 149, 447, 323, 324, 325, 326 of the Penal Code. He alleged that Bino Yadav (petitioner) made an objection,

while he was passing from in front of his house on 18.3.2000 at about 7.30 P.M. The informant replied that it is a public path and any one is free

to pass through it. This led to a hot exchange of words between the informant and Bino Yadav, the petitioner. Soon thereafter four persons namely

Lahsan Yadav, Mahelar Yadav, Rajo Yadav and Pawan Yadav came to his house armed with lathi, danda, bow and arrow. They charged the

informant with then-weapons causing injuries to him. One Chandrakala Devi, sister of informant too was assaulted by the aforesaid accused

persons with arrow when she tried to intervene. The police after investigation submitted final report not sending the petitioner for trial.

2. The cognizance of offence was taken and accused persons who were charge-sheeted were summoned to face trial. Thereafter the case was

committed to the court of sessions, charges were framed and two witnesses namely P.W. 1 (Chandrakala Devi) and P.W. 2, the informant,

Chandeshwari Mukhiya were examined on 3.7.2004 and 8.12.2004 respectively.

3. Thereafter the informant (Opposite Party No. 2) filed a petition u/s 319 Cr.P.C. for summoning the petitioner to face trial as the evidence of

P.Ws. 1 and 2 in trial would show that the petitioner also committed offence. However, the learned P.P. pleaded that no order need be passed at

this stage on the aforesaid petition and order, if any, be passed after some more witnesses are examined in the case. The learned trial court after

hearing the parties disposed of the aforesaid petition in terms of submissions made by learned P.P.

4. It is relevant to point out here that it was very much open for learned court to reject the prayer of learned P.P. and summon the petitioner to

face trial as well, which he did not consider appropriate at that stage. Neither the informant nor the P.P. seemed aggrieved as no one challenged

the aforesaid order in superior courts.

5. Thereafter again on 20.7.2006, on same set of evidence of P.W. 1 and P.W. 2, a petition was filed on behalf of prosecution praying therein to

summon the petitioner Bino Yadav to face trial in view of evidence appearing in depositions of P.Ws. 1 and 2.

6. The learned trial court by order dated 20.3.2007 after hearing the parties allowed the application u/s 319 Cr.P.C. and issued non-bailable

warrant of arrest against the accused Bino Yadav, who was not earlier charge-sheeted and summoned to face trial. The petitioner aggrieved by the

aforesaid order has moved this court.

7. The main ground urged by learned counsel for the petitioner is that the trial court or for that matter a Court of Magistrate or that of Sessions

have no jurisdiction to review its own order. He submits that the impugned order dated 20.3.2007 allowing petition u/s 319 Cr.P.C. amounts to

reviewing or recalling its own order dated 18.1.2006, whereby similar application u/s 319 Cr.P.C. was not allowed by the trial court on same set

of evidence. He submits that the order dated 18.1.2006 impliedly amounts to rejection of the petition filed by the informant summoning the

petitioner to face trial u/s 319 Cr.P.C. On the other hand learned counsel for the petitioner submits that the impugned order dated 20.3.2007

amounts to reviewing and recalling the earlier judicial order passed by the trial court in an application u/s 319 Cr.P.C. by which the Magistrate

disposed of the application to summon the petitioner to face trial after examination of few more witnesses in trial. He submits that the first order

passed by the Trial Judge is an implied rejection of the application of the Opposite Party to summon the petitioner to face trial.

8. Coming to the facts of the case, the informant did not allege that petitioner participated in assaulting the informant (P.W. 2) or his sister

Chandrakala Devi, P.W. 1 in the F.I.R. In his fardbeyan, he specifically stated that four persons other than the petitioner assaulted the prosecution

side by lathi, bows and arrows. Neither the informant (P.W. 2) nor his sister PW. 1 in their statements u/s 161 Cr.P.C. made any allegation that

petitioner assaulted anyone much less P.W. 1 and P.W. 2 (informant). However, after four years of occurrence they for the first time in course of

their deposition alleged that the petitioner also committed overt act. In support of his contention, learned counsel for the petitioner relied upon

decisions of the Hon"ble Apex Court in the case of Bindeshwari Pd. Singh vs. Kali Singh, 1977 SC 2432 equivalent to 1978 Cr.L.J. 187; State of

Himachal Pradesh vs. Krishna Lal Pradhan & Ors., 1987 SC 773 and Isham Singh vs. State of Haryana, 2004 Cr.L.J. 3235.

9. Learned counsel for the informant-Opposite Party No. 2 on the other hand submitted that the informant is as much competent as Public

Prosecutor to file an application u/s 319 Cr.P.C. bringing to the notice of the court that there are sufficient materials on record to summon a person

who has not been an accused in the case. He further submits that the court is also competent suo moto to exercise power u/s 319 Cr.P.C. He

further submits that if the trial court from evidence appearing in enquiry or trial finds that a person who is not an accused has committed an offence

and summons him to face trial, this court should refrain itself in interfering with the said order. He submits that in fact the informant earlier had filed a

protest petition showing lack of faith in the investigating agency. In support of his contention, he relied upon decisions of this court in the case of

Sk. Jamlu Quazi @ Md. Namaluddin and Others vs. State of Bihar and Anr., 1997(1) P.L.J.R. 811; Shashikant Singh Vs. Tarkeshwar Singh and

Another, ; Gupteshwar Singh vs. State of Bihar, 2007(1) B.B.C.J. 602 and Hari Kishun Prasad Verma and Others Vs. The State of Bihar and

Another, .

10. Much emphasis was put by learned counsel for the Opposite Party that in course of trial the informant could also file a petition before the court

u/s 319 Cr.P.C. for summoning a person who has not been made as an accused. It was further his case that it was equally open for the court to

summon a person to face trial u/s 319 Cr.P.C. even if learned P.P. or for that matter the informant does not press or seek withdrawal of the

application.

11. One cannot dispute the proposition laid down in the case of Sk. Jamlu Quazi @ Md. Namaluddin (supra) relied upon by learned counsel for

the Opposite Party. The ratio would not help the Opposite Party as the issue in this case is entirely different. In the aforesaid case the informant

filed an application for summoning the petitioner as an accused on 2.7.1988. The application remained pending and in the meantime the informant

filed a withdrawal application not pressing the earlier application for issuing summons u/s 319 Cr.P.C. The trial court rejected the contention of the

informant and summoned the petitioner Sk. Jamlu Quazi @ Md. Namaluddin who was neither sent up nor cognizance was taken against him earlier

to face trial. In these circumstances this court held that the trial court is not bound by the withdrawal application of the informant and if it comes to

the notice of the court that there was sufficient material to summon a person who is not an accused, the court could very well do so.

12. The fact of the case in hand is different. Here the trial court vide order dated 18.1.2006 disposed of the application of the informant acceded

to the prayer of learned P.P. to consider the application to summon the petitioner u/s 319 Cr.P.C. after some more witnesses are examined. The

trial court did not keep the petition pending rather disposed of the same in aforesaid terms which amounted to implied rejection to issue summons

to the petitioner to face trial at that stage. However, the trial court on same set of evidence passed order dated 20.3.2007 summoning the

petitioner to face trial. The matter would have been different if trial court had rejected the prayer of the P.P. and would have summoned the

petitioner to face trial by the first order passed on 18.1.2006.

13. Learned counsel for the Opposite Party seems to have missed the issue involved in this case and relied upon a decision of the Apex Court in

the case of Sashi Kant Singh vs. Tarkeshwar Singh & Anr. (supra). In the aforesaid case, the Apex Court was considering a different issue and the

points involved in this case was not the issue in the aforesaid case. In the aforesaid case the Apex Court was considering the issue whether a

person who was summoned u/s 319 Cr.P.C. could be tried de novo, if by the time he appeared in the court, the original trial against other accused

persons stood concluded. The Apex Court answered the issue in affirmative stating that expression ""could be tried together the accused"" figuring in

Section 319(1) is directory, whereas requirement of sub-section (4) of Section 319 regarding de novo trial of such person is mandatory. The

aforesaid issue is not the issue in the case in hand and as such the aforesaid decision has no application in this case.

14. Similarly the decision in the case of Gupteshwar Singh (supra) is also of no help. In the aforesaid case it was held that if a court is satisfied on

the basis of materials before it that there is sufficient evidence to summon an accused u/s 319 Cr.P.C. it can do so without any application from

P.P. or even the informant. The case of Hari Kishun Prasad Verma (supra) next relied by the petitioner is to the extent that this court would

generally not appreciate the evidence on record or consider the reliability or sufficiency of evidence in issuing summons against the accused. The

aforesaid decision would also be no help to the Opposite Party, as on the same set of evidence the trial court did not find it earlier expedient to

summon the petitioner to face trial.

15. In support of his contention the learned counsel relied upon a decision in the case of Krishna Lal Pradhan & Ors. (supra), Isham Singh vs.

State of Haryana (supra) and Bindeshwari Singh vs. Kali Singh (supra).

16. In the case of Krishna Lal Pradhan, the predecessor trial Judge finding sufficient material on record summoned the accused person not sent up

for trial. However, the successor Judge finding that no summon existed discharged them at the stage of framing of charge. The Apex Court held

that the order of Successor Judge amounts to reviewing of the order of Predecessor Judge which is not permissible in law.

17. In the case of Bindeshwari Prasad Singh (supra) the Apex Court held that there is no provision in Cr.P.C. empowering the learned Magistrate

to review or recall a judicial order passed by him. Inherent power u/s 561(a) (Old Code) conforming to Section 482 (new Code) is vested with

High Court only, unlike Section 151 C.P.C. which is available both to subordinate courts as well. The aforesaid decision delineating lack of

jurisdiction in Magistrate to review or recall its order in absence of any statutory provisions would be equally applicable to Sessions Court as the

latter too does not have any inherent power like High Court as provided u/s 482 Cr.P.C. Furthermore, the yardstick to be followed while

exercising powers u/s 319 Cr.P.C. is different than the one, the court exercises while summoning the accused to face trial u/s 190 or Section 204

Cr.P.C.

18. The Apex Court in the case of Isham Singh (supra) observed that power u/s 319 is to be exercised sparingly and primarily to advance cause of

criminal justice. Merely because the complainant names petitioner by attributing specific injury to them cannot infer their involvement in crime

particularly when version of complainant was an improvement of his earlier written version and more so, when there was enmity between the

parties.

19. Learned trial court on 18.1.2006 disposed of earlier application u/s 319 Cr.P.C. without summoning the petitioner to face trial. On same set of

evidence on a subsequent petition the court vide order dated 20.3.2007 summoned the petitioner to face trial. Subsequent order of the trial Judge

summoning the petitioner to face trial on same set of evidence would impliedly amount to recalling and reviewing his earlier order which is not

permissible in law.

20. In aforesaid circumstances, as such the order dated 20.3.2007 passed by the learned Addl. Sessions Judge, F.T.C.-6, Saharsa in S.T. No. 82

of 2002 allowing the application of Opposite Party u/s 319 Cr.P.C. is set aside.

21. It appears that two more witnesses have been examined by the trial court. This court as such remits the matter to the trial court for fresh

consideration of the matter u/s 319 Cr.P.C. taking into account the evidence of the subsequent witnesses as well as of P.W. 1 and P.W. 2. It is

made clear that this court has not expressed any opinion on the merit of the matter whether there is evidence or not to summon the petitioner to

face trial u/s 319 Cr.P.C. With the aforesaid direction, this application is allowed to the extent indicated above.