(1999) 08 PAT CK 0133

Patna High Court

Case No: Criminal Miscellaneous No. 2448/99

Ram Prabodh Yadav and Others		APPELLANT
	Vs	
State of Bihar		RESPONDENT

Date of Decision: Aug. 26, 1999

Acts Referred:

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

Citation: (2000) 4 PLJR 614

Hon'ble Judges: S.N. Jha, J

Bench: Single Bench

Advocate: Ram Shanker Pradhan, for the Appellant; Dilip Kumar Sinha 2 for State, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.N. Jha, J.

By the impugned order, the petitioners three in number have been summoned to face trial u/s 319 Cr.P.C. in Sessions Trial No. 91/98 arising out of Khajauli P.S. Case No. 130/95 u/s 302/34 IPC. The FIR was instituted against unknown. The police submitted charge sheet against six persons, namely, Hari Nonia, Ram Parichhan Nonia, Bisheshwar Sadai, Ram Kishore Yadav, Ramprit Sadai and Badri Sadai. The later four were shown as absconders. The cognizance was accordingly taken against Hari Nonia and Ram Parichhan Nonia. The informant moved Sessions Court against the order refusing to take cognizance against the petitioners in Cr. Rev. No. 934/96. The Sessions Court by order dated 19.11.97 declined to interfere. It however, observed that the informant will get opportunity to get the persons summoned in course of trial u/s 319 Cr.P.C. on the basis of the evidence of the prosecution witnesses. The impugned order was thereafter passed on 20.10.98.

2. From perusal of the order it appears that Sessions Court has taken into account and, in fact relied the case diary in passing the impugned order. However, as two prosecution witnesses have admittedly been examined in this case (till 1.7.98), I asked the counsel for the petitioner to produce their deposition. Counsel accordingly produced certified copies of the depositions of Ram Babu Yadav, P.W.1 and Ganga Yadav, P.W.2 examined respectively on 29.4.98 and 1.7.98. There is nothing in their evidence on the basis of which the petitioners could be summoned u/s 319 Cr.P.C. That Section lays down that where in course of enquiry or trial "it appears from the evidence" that any person not being the accused has committed any offence for which he could be tried, together with the accused already facing trial, the court may proceed against such person. In as much as the court below has relied on the case diary for summoning the petitioners and further that the evidence of two witnesses does not disclose prima facie the involvement of the petitioners in the crime, I am inclined to agree with the counsel that the court below committed error in passing the order. The order dated 20.11.1998 is accordingly set aside and this application is allowed.

It is made clear that this order has been passed on the basis of the evidence of the aforesaid two witnesses only. In case, any other prosecution witness has been examined after 1.7.1998 or is examined in future, it will be open to the court below to pass a similar order u/s 319 Cr.P.C. in accordance with law.