

Mafidan Bewa Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Jul-19-2017

Appellant : Mafidan Bewa

Respondent : The State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. M.P. No. 1873 of 2014
Mafidan Bewa Petitioner Versus The State of Jharkhand Opposite Party ---
CORAM: HONBLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the
Petitioner : Mr. Rajeeva Sharma, Sr. Advocate & Mr. Bipin Kumar, Advocate For
the State : Mrs. Vandana Bharti, APP Order No. 08 Dated 19th July, 2017 1.
Heard Mr. Rajeeva Sharma, learned senior counsel for the petitioner and Mrs.
Vandana Bharti, learned counsel for the State.

2. In this application, the petitioner has challenged the order dated 02.05.2014,
passed in Special Case No. 01 of 2013 by learned Principal Sessions Judge,
Pakur, whereby and whereunder, an application preferred by the prosecution u/s
319 of the Code of Criminal Procedure (Cr.P.C.) has been allowed and the
petitioner has been made an accused in the said case.

3. It has been submitted by learned senior counsel for the petitioner that on the
date the judgment was delivered with respect to the said accused persons, an
application filed u/s 319 Cr.P.C. three months earlier by the prosecution had been
allowed and the petitioner is being proceeded against. Learned senior counsel

further submitted that the judgment which has been passed by the learned trial court in the case of other accused, the role of the petitioner has also been assigned and in fact the learned trial court could not have prejudged such issue while passing the judgment against other accused persons. Even otherwise once the judgment has been delivered there was no question to have allowed the application u/s 319 Cr.P.C. It has thus been submitted that the impugned order deserves to be quashed and set aside.

4. Learned A.P.P. appearing for the State has opposed the prayer of the petitioner.

5. It appears that an F.I.R. was instituted in connection with Hiranpur P.S. Case No. 25 of 2013 on the allegation that one Rashid Sk. who happens to be the son-in-law of the petitioner was cultivating poppy plants. It is alleged that on enquiry it could be learnt that the land in question belonged to the petitioner and the petitioner on being asked had disclosed that she had given the land to her son-in-law namely Rashid Sk. to cultivate the same. It is thereafter alleged that in presence of local Magistrate and B.D.O., Hiranpur, 2. some poppy plants were taken as sample and after preparing seizure list the present case had been instituted. It has thus been alleged that Rashid Sk. without license was cultivating poppy plants in contravention of Section 8/18 of the N.D.P.S. Act. After investigation, charge-sheet was submitted against Rashid Sk and trial proceeded.

6. In course of trial 11 witnesses were examined and the next date was fixed for recording the statement u/s 313 Cr.P.C. Subsequently, the prosecution had filed an application u/s 319 Cr.P.C. for summoning the petitioner to face trial. Thereafter the statement of accused u/s 313 Cr.P.C. was recorded and after conclusion of the trial, next date was fixed as 02.05.2014 for pronouncing the judgment. On 02.05.2014, the judgment was pronounced by the learned trial court convicting Rashid Sk and on that date itself the application filed u/s 319 Cr.P.C. which remained pending before the learned trial for more than two months was allowed and the petitioner was directed to face trial in view of the fact that the witnesses had stated that the land in which the poppy plants were being cultivated belonged to her. The judgment of conviction passed in the case of accused Rashid Sk reveals that a passing reference has been given that the land belongs to Mafidan

Bewa, the petitioner, which had been handed over to her son-in-law for cultivating poppy plants. The learned trial court therefore cannot be said to have prejudged the involvement of the petitioner in cultivating poppy plants. The learned trial court on 02.05.2014 itself had allowed the application u/s 319 Cr.P.C. and had summoned the petitioner to face trial. It is to be seen under the provisions of Section 319 Cr.P.C. wherein the petitioner could have been proceeded when the judgment has already been delivered in the case of other accused persons.

7. For better appreciation Section 319 Cr.P.C. is quoted hereunder:- CRIMINAL PROCEDURE CODE, 1973 S.319 Power to proceed against other persons appearing to be guilty of offence (1) Where, in the course of any inquiry 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. (2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may 3. 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 witnesses re-heard; (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.

8. In the case of Hardeep Singh Vs. State of Punjab and others, reported in (2014) 3 SCC92 while considering the objects and purports of Section 319 Cr.P.C., it was held as follows:-

40. Even the word course occurring in Section 319 Cr PC, clearly indicates that the power can be exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced and is going on. It covers the entire wide range of the process of the pre-trial and the trial stage. The word course therefore, allows the court to invoke this power to proceed against

any person from the initial stage of inquiry up to the stage of the conclusion of the trial. The court does not become functus officio even if cognizance is taken so far as it is looking into the material qua any other person who is not an accused. The word course ordinarily conveys a meaning of a continuous progress from one point to the next in time and conveys the idea of a period of time: duration and not a fixed point of time. (See CIT v. East West Import & Export (P) Ltd.) 55. Accordingly, we hold that the court can exercise the power under Section 319 Cr PC only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove.

105. Power under Section 319 Cr PC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

9. It was, therefore, held that the powers of the trial court under section 319 Cr.P.C. can be exercised only after charges are framed as framing of 4. charges signals the commencement of the trial and/or recording of the evidence.

10. The powers under section 319 Cr.P.C. is to be exercised in course of any inquiry or trial. The term conclusion of trial can be traced back to the Code of Criminal Procedure, 1872 (Act 10 of 1872) wherein trial was defined in Section 4 to mean the proceedings taken in Court after a charge has been drawn up and includes the punishment of the offender. Subsequently, the definition of the term trial had been dropped in the Code of Criminal Procedure of 1882 and it has never resurfaced either in the Code of Criminal Procedure of 1898 or in the Code of Criminal Procedure of 1973. The conclusion of trial can be gathered from Section 353 of Cr.P.C., which envisages when a judgment has to be delivered.

11. Section 353 Cr.P.C. reads as follows:-

"53. Judgment.-

(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the Presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,- (a) by delivering the whole of the judgment; or (b) by reading out the whole of the judgment; or (c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub- section (1), the presiding officer shall cause it to be taken down in short- hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub- section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub- section (1), the whole judgment or a copy

5. thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted: Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465."

12. The key words used in Section 353 for the purposes of this case would be delivering of judgment after termination of the trial. It would thus mean that the trial concludes before a judgment is delivered.

13. Adverting to the case at hand it would appear from the order dated 02.05.2014 that prior to delivering the judgment, the application preferred u/s 319 Cr.P.C. had been allowed. The same would therefore be construed to mean that the learned trial court was within its jurisdiction to consider an application u/s 319 Cr.P.C. as the judgment was never pronounced when the impugned order dated 02.05.2014 was passed. In such circumstances, therefore it cannot be said that the impugned order dated 02.05.2014 was against the spirit of Section 319 Cr.P.C.

14. Learned senior counsel has also in course of his argument stated that an application u/s 319 Cr.P.C. if allowed, the same would lead to the newly made accused face de novo trial and he/ she has to be tried along with other accused persons. The contention raised by learned senior counsel for the 6. petitioner has already been answered in the judgment of Shashikant Singh v. Tarkeshwar Singh and another, reported in (2002) 5 SCC738 in which it has been held as follows:- 9. The intention of the provision here is that where in the course of any enquiry into, or trial of, an offence, it appears to the court from the evidence that any person not being the accused has committed any offence, the court may proceed against him for the offence which he appears to have committed. At that stage, the court would consider that such a person could be tried together with the accused who is already before the court facing the trial. The safeguard provided in respect of such person is that, the proceedings right from the beginning have mandatorily to be commenced afresh and the witnesses reheard. In short, there has to be a de novo trial against him. The provision of de novo trial is mandatory. It vitally affects the

rights of a person so brought before the court. It would not be sufficient to only tender the witnesses for the cross-examination of such a person. They have to be examined afresh. Fresh examination-in-chief and not only their presentation for the purpose of the cross-examination of the newly added accused is the mandate of Section 319(4). The words could be tried together with the accused in Section 319(1), appear to be only directory. Could be cannot under these circumstances be held to be must be. The provision cannot be interpreted to mean that since the trial in respect of a person who was before the court has concluded with the result that the newly added person cannot be tried together with the accused who was before the court when order under Section 319(1) was passed, the order would become ineffective and inoperative, nullifying the opinion earlier formed by the court on the basis of the evidence before it that the newly added person appears to have committed the offence resulting in an order for his being brought before the court.

15. Therefore the mandate of Section 319 Cr.P.C. is with respect to the trying of the case of newly made accused with the accused who is already facing trial is not mandatory in nature, as the word used is 'could be' and not 'must be' as has been indicated in the case of Shashikant Singh (supra). In 7. such circumstances, therefore, it was not mandatory on the part of the trial court not to pronounce judgment in the case of other accused person until and unless the trial with respect to the newly made accused is concluded. The learned trial court therefore prior to pronouncement of judgment had rightly passed the order on the petition of the prosecution filed u/s 319 Cr.P.C.

16. In view of above, therefore, the order dated 02.05.2014 passed in Special Case No. 01 of 2013 by learned Principal Sessions Judge, Pakur does not suffer from any illegality and accordingly, having not found any merit in this application, the same is hereby dismissed. (Rongon Mukhopadhyay, J) MK

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