

Saiyad Alam and ors. Vs. the State of Bihar

Saiyad Alam and ors. Vs. the State of Bihar

SooperKanoon Citation : sooperkanoon.com/123003

Court : Patna

Decided On : Mar-20-2007

Judge : Sadanand Mukherjee, J.

Appellant : Saiyad Alam and ors.

Respondent : The State of Bihar

Disposition : Application dismissed

Prior history : Sadanand Mukherjee, J. 1. Heard, the parties. 2. This is an application for quashing the order dated- 12.6.2004, passed by the Court of A.D.J. past Track Court No. 4, Kishanganj in Sessions Trial No. 374 of 2001, by which summons have been issued to the petitioners to face trial on the basis of an application under Section 319 of the Code of Criminal Procedure. 3. In the F.I.R. it is alleged that 30 accused persons named in the F.I.R. were uprooting the hut of the informant. It is further alle

Judgement :

Sadanand Mukherjee, J.

1. Heard, the parties.

2. This is an application for quashing the order dated- 12.6.2004, passed by the Court of A.D.J. past Track Court No. 4, Kishanganj in Sessions Trial No. 374 of

2001, by which summons have been issued to the petitioners to face trial on the basis of an application under Section 319 of the Code of Criminal Procedure.

3. In the F.I.R. it is alleged that 30 accused persons named in the F.I.R. were uprooting the hut of the informant. It is further alleged that accused petitioner No. 1 caught hold of the informant and accused Md. Latif (non-petitioner) assaulted him with Danda (bamboo stick) on the little finger of right hand and the skin was damaged and accused Noor Md. (non-petitioner) also assaulted the informant with Danda and fists and slaps. It is alleged that alarm was raised and nephews of the informant, Mukhtar Alam and Majrul reached there, and on their arrival accused petitioner No. 1 allegedly also assaulted Mukhtar with Kulhari (axe) on the head, Hasibut and Illias (non-petitioners) also assaulted with Kulhari (axe). The aforesaid non-petitioners as well as the petitioners also assaulted Mukhtar, causing injury on his person, in the meantime, villagers assembled there and intervened and the parties were separated, on the basis of the informant's statement Md. Ufifullah the fardbeyan was lodged and the case was instituted Under Sections 147, 148, 149, 323, 324, 307, 427, 379 and 504 of the I.P.C.

4. In the instant case, in course of investigation as submitted on behalf of the petitioner, the evidence came only against ten accused persons. Accordingly, police submitted charge-sheet only against ten accused persons and as there was no evidence against the petitioners, as such no charge-sheet was submitted against the petitioners, as stated on behalf of the petitioners.

5. It has been submitted that the Chief Judicial Magistrate had gone through the entire case diary and found no evidence against the petitioners and accordingly cognizance was taken only against the charge-sheeted accused persons. It has also been submitted that after submission of charge-sheet the prosecution did not file any protest petition. It is stated that both parties are descendants of common ancestor and there is civil disputes between the parties.

6. In course of trial four prosecution witnesses were examined and they made similar statements and have mentioned 17 petitioners. It has been submitted that the prosecution filed an application for summoning the petitioners under Section 219 of the Cr.P.C. The said application has been marked as Annexure-6 to this

petition. On the said petition, the court below vide order dated 12.6. 2004, ordered to issue summons to the petitioners. In the said order dated- 12.6.2004, the court below has indicated that the prosecution witnesses examined on behalf of the prosecution have stated in their evidence that the persons named in the petition have also committed the offence Under Sections 307, 348, 323, 324, 147, 148, and 149 of the I.P.C. alongwith other accused persons who are presently facing trial.

7. The learned defence counsel in the court below was opposing the prayer for inclusion of the petitioners as the witnesses had not stated about the persons named in the petition before the Investigating Officer and hence the police had not submitted charge-sheet against the persons named in the petition of the prosecution. It has been submitted that the prosecution wants to disturb and delay the speedy disposal of the case by filing the aforesaid petition. The court below in the order has stated about the charge-sheet submitted against only ten accused persons. The four witnesses have however stated before the Court that 17 petitioners also committed offence with the informant and assaulted the informant and other family members with Lathi, Axe and Garasa and they also broke the door. The learned court below found from the evidence of the informant and other three P.Ws. that the above 17 persons were also involved in commission of the alleged offence and they participated in the offence with ten charge-sheeted accused persons, hence order for issuance of summons was passed.

8. Learned Counsel for the petitioners has relied upon a case reported in 2000(2) P.L.J.R. page-784, wherein and whereunder, it was held that once the petitioner, as in that case, was found an accused in a case and no cognizance was taken and no revision was filed Under Section 398 of the Cr.P.C. he could not be subsequently made an accused in exercise of power under Section 319 of the Cr.P.C. In the reported decision, reliance has been placed on the judgments in the case of Sohanlal and Ors. v. State of Rajasthan, reported in 1991(1) P.L.J.R.(S.C.) page-41. However, in the decision as reported in 2000(2) P.L.J.R. page- 784 relied upon by the petitioner, the decision of the Hon'ble Supreme Court in the case of 'Ranjit Singh v. State of Punjab', as also in the case of Raj Kishore Prasad v. State of Bihar and Anr. as reported in : 1998 CriLJ4618 and : 1996 CriLJ2523

respectively have been cited, wherein and whereunder, it was held that the Sessions Court cannot summon any person Under Section 319 of the code prior to evidence collection stage. Before any person can be summoned Under Section 319 of the Cr.P.C. there must be some evidence adduced before the Sessions Court. It was, thus, held that the court of Sessions can exercise their jurisdiction Under Section 319 of the Code only on the basis of evidence recorded by it. In Kishori Singh's case as reported in 2004(13) S.C.C. page-4 there was similar situation which arose as in this case and it was held in that case that such persons cannot be made an accused in exercise of power Under Section 319 of the Cr.P.C. unless some evidence/materials are brought on the record in course of trial. In that case the Hon'ble Supreme Court also relied upon the decision in the case of Ranjit Singh v. State of Punjab, reported in : 1998 CriLJ4618 .

9. In this case evidence and materials have come against petitioners in course of evidence of witnesses.

10. Under the aforesaid circumstances, I do not find any infirmity in the order of the learned court below. Accordingly, this application is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com