

**Ajay Pathak @ Vs. State of Bihar and**

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**Court :** Patna

**Decided On :** Feb-09-2009

**Judge :** Abhijit Sinha, J.

**Appellant :** Ajay Pathak @ Ajaya Kumar Pathak @ Pandit Pathak Son of Late Dina Nath Pathak

**Respondent :** State of Bihar and Yogendra Prasad Choudhary S/O Late Raju Nandan Choudhary

**Disposition :** Application dismissed

**Judgement :**

**Abhijit Sinha, J.**

1. The petitioner, one of the F.I.R. named accused of Barari P.S. Case No. 70 of 2000 who had not been charge-sheeted but later after the commitment of the case to the Court of sessions where it was numbered as Sessions Trial No. 74 of 2001 he was summoned under Section 319 Cr.P.C. is aggrieved by and has prayed for quashing of the order dated 24.8.2007 passed therein by the learned Presiding Judge, Fast Track Court No. III, Katihar, whereby his petition for discharge under Section 227 Cr.P.C. has been rejected.

2. Briefly stated the prosecution case is that in the evening of 8.8.2000 while the informant with his younger brother, Rajendra Choudhary, since deceased, and his

nephew, Dilip Choudhary, was returning home from Barari Bazar and enroute had reached near Chowk Imali they met co-accused Munna Pathak, who accompanied them on there way home and they were followed by one Munchlal Rishi. It is said that at about 7.30 P.M. they reached near the bamboo clump of Keshaw Rai, the petitioner, suddenly jumped out from the bushes holding a countrymade pistol in his hand and immediately asked his brother, Munna Pathak, as to why he was talking with his enemies and ordered to eliminate Rajendra Choudhary, whereupon Munna from behind shot twice at Rajendra with a countrymade pistol which was followed by another fire by the petitioner as a result of which Rajendra Choudhary fell to the ground and died instantaneously.

3. After due investigation a charge sheet under Section 302 IPC and Section 27 of Arms Act was submitted against co-accused Munna Pathak on 19.12.2000 and the investigation was kept pending against the petitioner. It also appears that the Deputy Superintendent of Police, Katihar pursuant to the directions of the Superintendent of Police, Katihar, thoroughly supervised the case and found the allegations leveled against the accused persons to be false and the role of the Officer-In-Charge, Barari P.S. was also not found impartial and accordingly the Deputy Superintendent of Police on 19.1.2001 recommended for submissions of final form showing the petitioner as innocent and in accordance with the directions of the Superintendent of Police, Katihar, to submit final form, the final form was submitted on 19.5.2001 showing the petitioner as innocent. In view of the final form submitted the learned Chief Judicial Magistrate, Katihar, issued notice to the informant who notwithstanding receipt of the notice did not appear to contest the matter whereupon by order dated 3.8.2001 the learned Chief Judicial Magistrate discharged the petitioner. It appears that in the sessions trial of co-accused Munna Pathak 14 witnesses on behalf of the prosecution were examined and on consideration of the same Munna Pathak was convicted vide judgment dated 2.12.2003 and sentenced to undergo imprisonment for life under Sections 302/34 IPC and farther to undergo R.I. for 3 years on the charge under Section 27 of the Arms Act. It further appears that some of the witnesses in the said trial had deposed against the petitioner herein showing his involvement in the alleged murder of Rajendra Choudhary by fire arm and upon a petition filed by the prosecution the petitioner was summoned to face trial under Section 319 Cr.P.C.

by order dated 5.4.2003. Aggrieved thereby petitioner moved this Court in Cr. Revision No. 374 of 2003 which was dismissed on 30.8.2004. Having failed in his efforts the petitioner moved the trial court for discharge under Section 227 Cr.P.C. on the ground that the learned Chief Judicial Magistrate having accepted the final form submitted by the police, it amounted to a discharge of the petitioner under Section 227 of the Cr.P.C. and the learned trial court had failed to appreciate that the said order not having been challenged had attained finality. The submissions advanced on behalf of the petitioner did not find any favour with the Court and the same was dismissed.

4. Assailing the impugned order, identical submissions were advanced before me by the learned Counsel for the petitioner. It was also submitted that since the case of the petitioner is a split up one the original copy of the formal F.I.R., charge sheet and statement of witnesses on the basis whereof the trial court had summoned the petitioner under Section 319 Cr.P.C. not being available the summoning of the petitioner and rejection of his prayer for discharge under Section 227 Cr.P.C. was an abuse of the process of the Court.

5. I am not impressed by the submissions advanced by the learned Counsel for the petitioner. Admittedly the petitioner had moved this Court in Cr. Revision No. 374 of 2003 against the order summoning him under Section 319 Cr.P.C. which was dismissed and the petitioner not having moved a superior forum thereagainst the said order of dismissal had attained finality.

6. To undo the order of the High Court dated 30.8.2004 dismissing the revision he adopted an unique modus operandi by filing a petition under Section 227 Cr.P.C. before the trial court for recording his discharge after almost a lapse of about two years from the date of dismissal of the revision. By filing the petition under Section 227 Cr.P.C. he sought to make available to himself an other chance to move the High Court in an effort to get the order dated 30.8.2004 dismissing the revision reviewed by hook or crook knowing full well that a petition under Section 227 Cr.P.C. was not meant to be applied in cases where discharged accused were summoned under Section 319 Cr.P.C.

7. Whereas the provisions of Section 227 Cr.P.C. are applicable prior to the framing of the charges and has to be read in juxtaposition to each other where the Court is required at the very initial stage not to meticulously judge the evidence proposed to be adduced by the prosecution and not to see whether there is sufficient ground for conviction, the provisions of Section 319 Cr.P.C. deals with a matter arising during the course of the proceeding or trial which has already been initiated and witnesses have been examined and is directed to a person other than the accused persons who appear to have committed an offence for which he could be tried together with the accused already being tried.

8. There is another aspect of the matter. The 'evidence' envisaged in Section 319 Cr.P.C. is the evidence tendered during the trial of the case whether it is by a magisterial court or by the court of sessions, the material placed before the committal court cannot be treated as 'evidence' collected during such inquiry or trial. Reference in this connection may be made to the decision of Raj Kishore Prasad v. The State of Bihar : 1996 CriLJ2523 . Admittedly the stage of evidence collection by the Court of Sessions commences after charge is framed against the accused.

9. Due regard being had to the facts and circumstances of the case and the discussions made above I find no merit in this application which apart from being frivolous appears to be an exercise in futility to bide time. I dismiss the same with cost quantified at Rs. One thousand.

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