

Prem Kumar Singh @ Prem Singh Vs. State of Bihar

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Court : Patna

Decided On : Apr-30-2008

Judge : Abhijit Sinha, J.

Acts : Indian Penal Code (IPC) - Sections 34 and 407; Code of Criminal Procedure (CrPC) - Sections 161 and 319

Appeal No. : Cr. Misc. No. 11247 of 2007

Appellant : Prem Kumar Singh @ Prem Singh

Respondent : State of Bihar

Advocate for Def. : Jharkhandi Upadhyay, A.P.P. and Nand Kishore Pd. Sinha, Adv. for Opp. Party No. 2

Advocate for Pet/Ap. : Markandey Singh, Syed Wazir Ali and Raghunath Singh, Advs.

Disposition : Application allowed

Judgement :

Abhijit Sinha, J.

1. The petitioner who was one of the named accused in Bihta P.S. Case No. 192 of 2004 and against whom investigation is still pending is aggrieved by the order

dated 14.7.2006 passed by Sri Rakesh Kumar Singh, Judicial Magistrate, 1st Class, Danapur, whereby he has summoned the petitioner under the provisions of Section 319 Cr.P.C. to face trial along with other accused person who has already been sent up.

2. The aforesaid case was registered on the written report of one Anand Kumar Singh, impleaded herein as Opp.Party No. 2, inter alia, stating that he is a Commission Agent and carries on business of transportation of goods/products of different factories in the name and style of 'Balajee Road Lines' and in that capacity on 11.7.2004 he had sent a consignment of 8.950 Kgs. of iron rods through truck bearing Registration No. UP-53H-4190 driven by driver, Vijendra Singh, to Bal Mukund Iron Factory, Varanasi and accused Prem Singh (the petitioner herein) apart from identifying the truck and its driver had also taken responsibility of seeing that the consignment were delivered at the proper destination. However, it is alleged, that the aforesaid consignment never reached the factory at Varanasi. It is said that a Sanha in this respect was lodged with Danapur Police Station and in this connection on the basis of photographs of the truck and its driver, search was made and in course thereof it transpired that the real name of the truck driver was Vijendra Prasad who resides in East Lohanipur, Patna and, accordingly, the written report was submitted at Bihta P.S. on 1.8.2004.

3. On the basis of the said written report, Bihta P.S. Case No. 192 of 2004 was registered under Section 407/34 I.P.C. and after due investigation whereas the investigation was kept pending against the petitioner and two non-F.I.R. accused, a chargesheet was submitted against the driver, Vijendra Prasad, only. It appears that during the trial the informant was examined as P.W.1 and he chanced to name the petitioner and on a petition filed by the prosecution the petitioner has been summoned under Section 319 Cr.P.C. to face trial along with chargesheeted accused, Vijendra Prasad.

4. It has been submitted by the learned Counsel for the petitioner that the petitioner is innocent and there is no document to support the allegations against the petitioner that he had either identified and or introduced the truck and its driver in question to the informant in any manner whatsoever and similarly there was no

document to show that the petitioner had given any guarantee of safe delivery and transportation of the iron rods to the factory concerned at Varanasi. Referring to the impugned order, the learned Counsel for the petitioner sought to submit that the learned Magistrate in summoning the accused had relied upon the sole testimony of P.W.1. apart from several paragraphs of the case diary wherein the name of the petitioner had figured, which was neither warranted nor had legal sanctity inasmuch as the evidence collected in course of investigation in the statements under Section 161 Cr.P.C. do not constitute 'evidence' and the 'special evidence' under Section -319 Cr.P.C. denotes evidence given in the court. It was also submitted that merely naming the accused by one of the prosecution witnesses was not sufficient and the provisions of Section 319 Cr.P.C. should be brought into operation only after sufficient materials to show the implication or participation of the said accused comes on record.

5. The learned Counsel for Opp.Party No. 2 sought to seriously oppose the submissions advanced by the learned Counsel for the petitioner and submitted that there were sufficient materials to show the implication of the petitioner and after the deposition of P.W.1 the learned Magistrate was justified in summoning the petitioner to face the trial along with co-accused Vijendra Prasad. It was also submitted that Section 319 Cr.P.C. never contemplated the number of witnesses but 'evidence' which has come in course of trial and P.W.1 had specifically named the petitioner.

6. Section 319 Cr.P.C. provides for power to proceed against other persons who appear to be guilty of offence. This Section comes into operation at the post cognizance stage when it appears to the Court from the evidence recorded at the trial that any person other than those named as offenders appears to have committed any offence in relation to an incident for which co-accused are on trial. The basic requirement for invoking the provisions of Section 319 Cr.P.C. is that it should appear to the court from the evidence collected during the trial or at the enquiry that some other person who is not arraigned as an accused in that case has also committed an offence for which that person could be tried together with accused already arraigned. It is not enough that the court entertained some doubt from the evidence about the involvement of another person in the offence. The

court must have reasonable satisfaction from the evidence already collected regarding two aspects; firstly that the person has committed an offence and secondly, that for such other person could be tried along with already arraigned accused.

7. The expression 'any person not being the accused' includes a person who has been brought by the police during the investigation or against whom investigation is still pending and against whom the evidence comes before the court that he is also involved in the offence. In the instant case, from the impugned order it appears that only one prosecution witness has been examined in this case and he has chanced to name the petitioner and apart from that the learned Magistrate has placed reliance only on several paragraphs of the case diary wherein the name of the petitioner has purportedly figured and taking the same as legal evidence has summoned the petitioner under Section 319 Cr.P.C.

8. In the case Lok Ram v. Nihal Singh reported in : 2006 CriLJ2366 the Apex Court has observed in paragraphs 10 and 11 that the word 'evidence' in Section 319 Cr.P.C. contemplates the evidence of witnesses given in court and the trial court can take such steps to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the chargesheet or the case diary, because such materials contained in the chargesheet or the case diary do not constitute evidence. Similar is the observations of the Apex Court in Ranjit Singh v. State of Punjab reported in : 1998 CriLJ4618 , which in turn placed reliance on the decisions of Raj Kishore Prasad v. State of Bihar reported in : 1996 CriLJ2523 , Kishun Singh v. State of Bihar reported in : 1993 CriLJ1700 and Yogendra Singh v. State of Haryana reported in : 1979 CriLJ333 .

9. There is another aspect of the matter. Power under Section 319 Cr.P.C. should normally be exercised with care and circumspection and almost sparingly on the basis of evidence sufficient to put some more persons on trial. Therefore at the stage of evidence under Section 319 Cr.P.C. there should be sufficient ground for proceeding afforded by evidence adduced during the trial which would spur the trial court to summon additional accused. In the instant case it is only on the basis

of the deposition of the informant that the court has proceeded to summon the petitioner. Apparently, the informant is an interested witness and as would appear from the complaint petition itself no specific allegation so as to constitute a crime has been made out against the petitioner. In that view of the matter, the learned trial court ought to have waited for adducing of the deposition of other chargesheet witnesses and in the event those witnesses had also named the petitioner and testified to his complicity in the crime he could have summoned the petitioner under Section 319 Cr.P.C. since the fact of the other witnesses also having named the petitioner and testified to his participation in the crime would have amounted to 'sufficient evidence'.

10. For the present in view of the discussions made above, in my opinion the summoning of the petitioner under Section 319 Cr.P.C. at this stage appears to be pre-mature since mere statement of P.W.1 would not amount to 'sufficient evidence' nor would the statements of witnesses under Section 161 Cr.P.C. examined in course of investigation, on which the learned Magistrate has placed reliance amount to legal evidence.

11. In view of the discussions made above, I am of the opinion that the summoning of the petitioner under Section 319 Cr.P.C. at this stage would amount to an abuse of the process of the Court. Accordingly, the impugned order summoning the petitioner under Section 319 Cr.P.C. is hereby quashed and the application is allowed.