

**Bashist Pandey and anr. Vs. State of Bihar and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/137971](http://sooperkanoon.com/137971)

**Court :** Patna

**Decided On :** Apr-11-2008

**Judge :** Abhijit Sinha, J.

**Appellant :** Bashist Pandey and anr.

**Respondent :** State of Bihar and anr.

**Disposition :** Application dismissed

**Judgement :**

**Abhijit Sinha, J.**

1. The two petitioners, who are F.I.R. named accused in S.Tr. No. 210 of 2000 arising out of Chanpatia P.S. Case No. 110 of 1992, have prayed for quashing of order dated 20.9.2004 passed therein by the learned IVth Additional Sessions Judge, West Champaran at Bettiah, whereby he has allowed the application Under Section 319 Cr.P.C. filed by the Opp. Party No. 2 and has summoned the petitioners to face trial.

2. Ramawati Devi, wife of Suresh Sah gave her fardbeyan at 6.00 P.M. on 31.5.1992 and on the basis thereof an F.I.R. was drawn up on 2.6.1992. The prosecution case, in brief, is that on 13.1.1992 Suresh Sah had gone to the Sugar Mill to deliver the sugarcane of Birendra Kuwar and no male member was present in the house as her father-in-law, Dhuri Sah, was sleeping at the Darwaia of

Birendra Kuwar. It has been alleged that about 10-11.00 P.M., tractor drivers, Lallu Mian, Samsheer Mian and Basisth Pandey, all henchmen of Birendra Kuwar, and Dasai Dhobi, servant of Birendra Kuwar variously armed came to her house and forcibly took her away. They were later joined by Birendra Kuwar and she was gagged and forcibly taken to Village- Baikunthwa and confined in the house of Agar Mian. It has been alleged that here Birendra Kuwar used to come at the interval of 3-4 days and rape her against her will. It is also alleged that she was kept in the house of Agar Mian under close surveillance for about a month and when rumours floated in the village she was removed to Village- Ahwar by Birendra Kuwar and driver Lallu Mian and kept in the house of the relative of Lallu Mian. According to the informant, when her forcible confinement came to be known to the people then Birendra Kuwar with the help of other co-accused took her to Jogapatti where he and others ravished her. It is further alleged that it was here that Birendra Kuwar ordered the other accused to kill her and in compliance thereto they assaulted her and when they thought that she was dead she was thrown in the sugarcane field. On regaining consciousness she came to her father's house with the help of the local Chowkidar.

3. It has been submitted on behalf of petitioners that prior to the fardbeyan the informant had filed a complaint case in the Court of Chief Judicial Magistrate, West Champaran at Bettiah being Complaint Case No. 155(C) of 1992 for the same occurrence on 4.3.1992 and on perusal of the complaint petition it would appear that the story narrated by the informant is not the same as that of her fardbeyan inasmuch as whereas in the complaint petition she had alleged that prior to the present case in the sugarcane field she was raped by Birendra Kuwar, but there is no mention of the said occurrence in the F.I.R. It was further submitted that on the materials available at the enquiry held under Section 202 Cr.P.C, the learned Magistrate by his order dated 22.6.1992 did not find any prima facie case against the petitioners and a prima facie case was only found against accused Lallu Mian Under Sections 498, 323 and 325 I.P.C. and, accordingly, cognizance was taken only against Lallu Mian under the said sections. It has also been submitted that the learned Chief Judicial Magistrate in course of enquiry had called for a report from the Police and, according to the report was submitted by the Police, the complainant on 27/29.2.1992 had gone to Village-Nangawan. In this connection, it

was submitted that, in fact, it was the complainant who was having an illicit relationship with Lallu Mian and had fled with him and the petitioners are being falsely implicated as they are close to Birendra Kuwar, who is an influential person and being targeted by his opponent. This fact has been ascertained by the DIG in his supervision note.

4. It has been further submitted that the Complainant had preferred Cr. Revision No. 174 of 1992 before the learned Sessions Judge, West Champaran at Bettiah against the order dated 22.6. 1992 which was dismissed vide order dated 13.9.1992 and against the same the Complainant filed Cr. Misc. No. 14667 of 1992 before this Court which was also dismissed vide order dated 18.8.1993. Birendra Kuwar filed Cr.W.J.C.No.319 of 1992 before this Court to quash the prosecution arising out of Chanpatia P.S. Case No. 110 of 92 against the petitioners and others but the same was dismissed by order dated 27.7.1999 with direction to the Police to conclude the investigation and submit the report to the Magistrate. It was also directed that the learned Magistrate shall proceed with the complaint case as well as the Police Case in accordance with the provisions of Section-210 Cr.P.C. After the Police submitted charge sheet in Chanpatia P.S. Case No. 110 of 1992 against Lallu Mian and Badri Mian only, the petitioners and other accused were not sent up for trial. However, at the trial itself after two witnesses had been examined, a petition was filed by the complainant Under Section 319 Cr.P.C. for summoning the petitioners to face trial and by the impugned order the petitioners have been summoned.

5. It has been submitted by the learned Counsel for the petitioners that the learned court below had failed to appreciate that the petitioners having been discharged could not be summoned Under Section 319 Cr.P.C, more so when they are discharged by the Court in a complaint case on the same set of facts. In other words what the learned Counsel wanted to impress was 'that in view of the order passed by this Court in Cr.W.J.C.No.319 of 1992 both the Police as also the Complaint Case were merged and since the petitioners had figured as accused in both the cases and had been discharged they could not be summoned to stand the trial Under Section 319 Cr.P.C. by passing the impugned order.

6. A preliminary objection has been raised by the learned Counsel for the Opp. Party No. 2 to the maintainability of the instant application in view of order dated 22.9.2006 passed by a learned Single Judge of this Court in Cr.Misc.No.31828 of 2004 wherein the principal accused Birendra Kumar Sharma @ Birendra Kuwar had challenged the order summoning him Under Section 319 Cr.P.C. under identical grounds taken herein.

7. The learned Counsel for Opp. Party No. 2 has placed a photo copy of the certified copy of the order of Cr.Misc.No.31828 of 2004 for my perusal and in support of his submissions. I have perused the same and find that the points/issues raised therein were factually identical to the submissions advanced herein by the learned Counsel for the petitioners. Having regard to the well discussed order based on decisions of the Apex Court and this Court. I am in respectful agreement with the same.

8. The language of Section 319 Cr.P.C. is in clear terms and brooks no ambiguity. Once the trial court is properly seized of a case as a result of the committal order against some accused, then under Sub-section (1) of Section-319 Cr.P.C., that court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with the other accused persons, if the court is satisfied at any stage of the proceeding on the evidence adduced at the trial that the persons who have not been arrayed as accused should also face the trial. It needs to be made clear herein that the word 'evidence' in Section 319 Cr.P.C. clearly contemplates the evidence of the witnesses given in court and the trial court can take such a step to add such person as accused only on the basis of the evidence adduced before it and not on the basis of materials available in the case diary because such materials contained in the case diary do not constitute evidence. I am fortified in my view by the decision in Lok Ram v. Nihal Singh : 2006 CriLJ2366 .

9. In the instant case the petitioners admittedly had been impleaded as accused both in the complaint petition as also the first information report but neither was any process issued to them in connection with the complaint case following the enquiry under Section-202 Cr.P.C. nor had they been charge sheeted in the police case. Therefore, at no point of time did they appear before the court as accused

nor could they be designated as accused in the said case. It was only after the prosecution had adduced evidence that the fact of involvement and participation of these petitioners in the crime came to light and the learned trial court being satisfied with the materials avail from the deposition of the prosecution witnesses summoned them under Section 319 Cr.P.C. There is no apparent illegality in the impugned order. Accordingly, I find no force in the contention to the contrary as raised on behalf of the petitioners.

10. In the result I find no merit in this application which is accordingly dismissed.

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