

Dharmendra Pandey Vs. The State of Jharkhand and Anr

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Court : Jharkhand

Decided On : Aug-10-2015

Appellant : Dharmendra Pandey

Respondent : The State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI. Cr. M.P. No. 296 of 2015
---- Dharmendra Pandey, S/o Late Brij Raj Pandey, Plot no. 102, Bari Co- operative,
PO & PS B.S.City, Bokaro, Jharkhand. Petitioner. Versus 1. The State of
Jharkhand 2. Abhay Upadhyay . Respondents. ----- CORAM : HON'BLE MR.
JUSTICE PRASHANT KUMAR ----- For the Petitioners : M/s A.K.Kashyap and
Mukesh Kumar For the Respondents : Mr. Abhinesh Kumar, Add.P.P. -----
Reserved on 20.07.2015 Delivered on 10/08/2015 ----- Prashant Kumar, J.

This application has been filed for quashing the order dated 17.01.2015 passed by
learned Additional Sessions Judge-II, Bokaro in Sessions Trial No. 12/2007 where
by and where under, he rejected the application where by the petitioner prayed for
the stay of the proceeding of Sessions Trial and further prayed that he may be
tried with other accused who were made accused under section 319 Cr.P.C.

2. It appears that on the written report of Abhay Upadhyay, Bokaro Steel City (Sector-IV) P.S.case no. 197/2006 dated 21.07.2006 instituted under section 304(B) of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act against the petitioner (Dharmendra Pandey) and two others namely, Gyanendra

Pandey and Renu Pandey. It then appears that police after investigation submitted charge-sheet only against the petitioner under section 304(B) of the Indian Penal Code. The record further reveals that the case of the petitioner, Dharmendra Pandey committed to the court of Sessions as the offence under section 304(B) of the Indian Penal Code is exclusively triable by a court of Sessions. Accordingly, Sessions Trial No.12/2007 instituted. Thereafter, charge framed against the petitioner. Then, prosecution examined some -2- witnesses in support of its case. Thereafter, it filed an application on 26.02.2009 under section 319 Cr.P.C. requesting the court to summon Gyanendra Pandey and Renu Pandey to face the trial along with the petitioner. Against the said application, petitioner filed rejoinder on 25.03.2009. Thereafter, both the parties were heard and the learned Addl. Sessions Judge vide order dated 06.10.2010 allowed the application of the prosecution and summoned Gyanendra Pandey and Renu Pandey. It appears that against the aforesaid order of learned Addl. Sessions Judge, the aforesaid two co-accused, filed a revision in this Court vide Cr. Revision No. 31/2011. The aforesaid Cr. Revision dismissed by this Court vide order dated 09.05.2012. Thereafter, learned Addl. Sessions Judge issued non-bailable warrant of arrest against the two co-accused. It appears that due to non-appearance of the aforesaid two co-accused, learned court below split up the case of aforesaid two co-accused from the case of this petitioner, namely, Dharmendra Pandey vide order dated 24.07.2012. and a separate sessions case instituted vide Sessions Trial No. 12/2007(S) for the absentee co-accused namely, Gyanendra Pandey and Renu Devi.

3. It is not out of place to mention that against the order dated 09.05.2012 passed by this court in Cr. Revision No. 31/2011, co-accused Gyanendra Pandey and Renu Devi filed Special Leave to Appeal vide S.L.P.(Cr.) no. 8086/2012 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order 31.10.2012 had stayed the order dated 06.10.2010 passed by the Addl. Sessions Judge in Sessions Trial No. 12/2007 in so far as it relates to Gyanendra Pandey and Renu Devi. It is worth mentioning that the aforesaid S.L.P. dismissed by the Hon'ble Supreme Court vide order dated 31.03.2014.

4. It is appears from the order-sheet of the court below that after -3- splitting the trial of petitioner with that of other two co-accused, learned court below examined almost all the material witnesses including the informant, doctor and I.O. Thereafter, on 18.12.2014, petitioner filed an application in the court below for stay of the sessions trial , so that petitioner could be tried with newly added co-accused as per provisions contained under section 319 Cr.P.C. The aforesaid application of the petitioner has been rejected by the learned court below vide order dated 17.01.2015. Against that order, present application filed.

5. It is submitted by Sri A.K.Kashyap, learned senior counsel that the words "person could be tried" appearing in Section 319 Cr.P.C. shows that the newly added accused must be tried along with the accused already facing trial. Shri Kashyap, submitted that as in the instant case newly summoned accused had already appeared in the split up case, therefore, it is mandatory for the learned court below to try all the accused person including the petitioner afresh. Accordingly, Shri Kashyap submitted that after summoning the co-accused vide order dated 06.10.2010 continuance of trial of the petitioner separately is illegal, therefore, subsequent proceeding is liable to be set aside. Thus, Sri Kashyap submitted that learned court below may be directed to stay the proceeding of S.T.No. 12/2007. He then submits that the court below may also be directed to amalgamate both the S.T.No. 12/2007 and S.T.No. 12/2007(S) and proceed with the trial afresh, as per provisions contained under section 319 (4) Cr.P.C.

6. On the other hand, learned Addl.P.P. submitted that it is not mandatory for the learned court below to try the petitioner along with newly added co-accused namely, Gyanendra Pandey and Renu Pandey as per provision of Section 319 (1)(4) Cr.P.C. He submitted that from plain reading of Section 319 (4) Cr.P.C., it is clear that fresh trial is necessary -4- and mandatory for the persons who were summoned under sub-section (1) of Section 319 Cr.P.C. Learned Addl.P.P. further submitted that even section 319(1) Cr.P.C. does not say that petitioner must be tried along with newly summoned co-accused. He further submitted that from perusal of the order-sheet of the learned court below, it is clear that even after disposal of Cr. Revision, co-accused did not appear in the court below and for that reason , non-bailable warrant of arrest issued against them. Even after issuance of

non-bailable warrant of arrest, they did not appear, therefore, the court below split up their case from the case of petitioner vide order dated 24.07.2012. Learned Addl.P.P. further submitted that the aforesaid order dated 24.07.2012 has not been challenged by the petitioner and he participated in the trial and cross-examined the witnesses who were examined after 24.07.2012. Thus, in the final end of the trial, the petitioner cannot take such plea for amalgamation of both sessions trials to defeat the ends of justice. Accordingly, it is submitted that there is no illegality in the impugned order.

7. After hearing the counsels for the parties, the only question arose in this case for determination : "whether it is mandatory for the trial court to try the petitioner/accused together with co-accused who were summoned under section 319 Cr.P.C. vide order dated 06.10.2010 8. Section 319 Cr. P.C. reads as follows : 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 require , for the purpose aforesaid. (3) Any person attending the Court although not under arrest -5- or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial or, the offence which he appears to have committed. (4) Where the Court proceed 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." 9. From bare perusal of Section 319 Cr. P.C., it is clear that same had two parts. First part deals with the conclusion of the court i.e. If the court during an enquiry or trial on the basis of evidence concludes that any person, who is not accused in the trial had also committed any offence for which he could be tried along with the accused, who is facing trial. The second part says if the court comes to such conclusion then the court may proceed against such person for the offence which he had committed. Thus, from

Careful reading of Section 319(1) Cr.P.C., it is clear that it is not mandatory for the court to try the newly summoned accused persons along with the accused, who was facing trial from before. This fact further find clarified from the reading of sub-section 4 of Section 319 Cr.P.C., which says that if the court took decision to proceed against any person under sub-section (1) of Section 319 Cr.P.C. then the proceeding in respect of such person shall be commenced afresh and the witnesses will be re-examined. Thus, sub-section (4) of Section 319 Cr.P.C. shows that the fresh trial will commence only with respect to newly added co-accused. It did not say that the accused who was facing the trial from before be re-tried along with newly added accused.

10. Hon'ble the Supreme Court in *Shashikant Singh Vs Tarkeshwar Singh and Another*, reported in 2002(5) SCC-738 at paragraph 9 has held as follows : -6- "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 provisions 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." 11. From perusal of aforesaid interpretation of the Hon'ble Supreme Court, it is clear that it is not mandatory for the trial court to try the newly summoned co-accused along with the accused who is facing the trial from before. Hon'ble the Supreme Court had again reiterated the aforesaid view in Babubhai Bhimabhai Bokhiria and another Vs. State of Gujarat and others" reported in 2013 (9) SCC-500.

12. In the instant case, as noticed above, after disposal of Cr. Revision, the trial court split up the case of the petitioner from the case of co-accused Gyanendra Pandey and Renu Pandey, because due to their non-appearance, the trial of the petitioner was being delayed. It is not out of place to mention here that from perusal of order dated 06.10.2010, it is clear that the petitioner opposed the application filed by the prosecution -7- under section 319 Cr.P.C. by saying that if said application will be allowed then the trial of the petitioner will be protracted, which is against the fundamental right of the petitioner of speedy trial. It appears that learned court below had split up the trial of the petitioner only with a view to give speedy justice to the petitioner, but now at the fag end of the trial, when all most all the material witnesses including the informant, doctor and I.O. have been examined, the petitioner wants to delay the proceeding and request the court that he may be re-tried along with co-accused afresh. Thus, in my view, aforesaid action of the petitioner is against the settled norms of dispensation of justice. Thus, on that ground also prayer of the petitioner is liable to be rejected.

13. In view of the discussions made above, I find no merit in this case. Accordingly, this application is dismissed. (Prashant Kumar, J.) Raman/

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