

Manorma Devi. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Jul-29-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 319; Indian Penal Code (IPC) - Sections 302, 201

Appeal No. : CRIMINAL MISCELLANEOUS No.31576 OF 2000

Appellant : Manorma Devi.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mrs. Pushpa Sinha, Adv.

Advocate for Pet/Ap. : Mr. Ashok Kumar Mishra, Adv.

Judgement :

1. An innocent boy, who had fallen in love with the daughter of the petitioner, was done to death in a deep rooted conspiracy. The petitioner, who is mother of Mamta Kumari with whom the deceased Bhagwan Jha was having love affair, has approached this Court, while invoking inherent jurisdiction of this Court under Section 482 of Code of Criminal Procedure, for quashing of an order dated 20.07.2000 passed by Additional Sessions Judge III, Saharsa in Sessions Trial No 236 of 1998. By the said order, the learned Additional Sessions Judge III, Saharsa, while exercising power under Section 319 of Criminal Procedure Code, on the prayer made by the prosecution, has summoned the petitioner for facing

trial along with two other accused persons. For the said occurrence, first information reports vide Sonbarsa PS Case No 25 of 1997 was registered on 03.05.1997 for the offence under Section 302 and 201 of the Indian Penal Code.

2. Short fact of the case is that one Pankaj Kumar Bharti, brother of Bhagwan Kumar Jha (deceased) gave his Fardbeyan in the bamboo clamp of one Shrideo Jha disclosing therein that his brother Bhagwan Kumar Jha was killed by some unknown persons. After registering the first information report, the police investigated the case. During investigation, name of five accused persons transpired. However, after investigation, chargesheet was submitted only against three accused persons, namely, Shobha Kant Jha, father of Mamta Kumari, Veda Nand Jha (brother of shobha Kant Jha) and Bibhakar Jha, brother of Mamta Kumari. However, two accused persons, namely, Chandra Bhushan Jha and Jawahar Jha were not sent up for trial. After the case was committed to the Court of Session and trial commenced, altogether seven witnesses have been examined on behalf of the prosecution. After evidence was brought on record showing involvement of three other accused persons which include the petitioner, a petition was filed on behalf of the prosecution for summoning the three accused persons including the petitioner to face trial along with other accused persons. Learned Additional Sessions Judge-III, Saharsa after minutely examining the evidence brought on record and hearing the parties, by his speaking order dated 20.07.2000 ordered for summoning the three accused persons including the petitioner. Aggrieved with the order dated 20.07.2000, the petitioner has approached this Court by filing the present petition.

3. Mr Ashok Kumar Mishra, learned counsel appearing on behalf of the petitioner, while pressing the present petition, submits that though seven witnesses were examined during trial, most of the witnesses were close relatives of the deceased that too have not specifically asserted regarding direct involvement of the petitioner in the murder of Bhagwan Kumar Jha. It is further submitted that whatever materials were brought on record during the trial, were not sufficient to indicate that there were any possibility of conviction of petitioner in the case. Learned counsel for the petitioner has further submitted that power under Section 319 of Code of Criminal Procedure is to be exercised in special circumstance and,

that too, sparingly. Learned counsel for the petitioner has relied upon a judgment of this Court reported in 2010 (2) PLJR 129 (Haldhar Prasad Mehta versus- State of Bihar). It was submitted that this Court has relied upon a judgment of Supreme Court in a case reported in 2005 (1) PLJR 50 (Krishnappa versus- State of Karnataka). It was argued that Hon'ble Supreme Court in Krishnappa case (supra) has held that unless there is sufficient material, the Court should not exercise power under Section 319 of the Code of Criminal Procedure and on this ground alone the Supreme Court had quashed the order of summoning the accused in Krishnappa case (supra). It was submitted that whatever materials have been brought on record are not sufficient to summon the petitioner and, accordingly, it has been prayed to set aside the order dated 20.07.2000 so far as it relates to the petitioner.

4. Mrs. Pushpa Sinha, learned Additional Public Prosecutor appearing on behalf of the State has opposed the prayer of petitioner.

5. Besides hearing learned counsel for the parties, I have also perused the materials available on record particularly the order dated 20.07.2000 whereby learned Additional Sessions Judge-III, Saharsa has summoned the petitioner alongwith two other accused persons to face trial. Learned Additional Sessions Judge-III, Saharsa has categorically dealt with the evidence of P Ws 1 to 7. It appears from the impugned order that P Ws 1 to 4 have categorically stated regarding involvement of the petitioner in the murder of Bhagwan Kumar Jha who was having love affair with the daughter of the petitioner. It is true that P Ws 6 and 7 have not stated specifically regarding involvement of the petitioner but they had stated that they had seen five accused persons at the time of occurrence in the night. From the materials available on the record, the learned Additional Sessions Judge- III, Saharsa had rightly come to a conclusion that it was a fit case for summoning the petitioner alongwith two other accused persons, who were none else but relatives of the petitioner and in the present case, husband of the petitioner, her son as well as brother of her husband were made accused with direct allegation. So far as the judgment which has been referred to by the learned counsel for the petitioner is concerned, it is true that power under Section 319 of the Code of Criminal Procedure is to be exercised sparingly but keeping in view

the seriousness of the offence in the present case, this Court is of the opinion that materials which were noticed by the Additional Sessions Judge-III, Saharsa were sufficient to summon the petitioner to face trial. So far as exercise of power under Section 319 of Criminal Procedure Code is concerned, in the present case, there is no allegation that there was any technical flaw in exercising power under Section 319 of the Code of Criminal Procedure. Keeping in view the nature of allegation and seriousness of the offence, this Court is of the opinion that the learned Additional Sessions Judge-III, Saharsa has rightly passed the order for summoning the petitioner to face trial along with two other accused persons.

6. Accordingly, I do not find any merit in the present case and the petition stands rejected.

7. In view of rejection of this petition, interim order of stay dated 10.12.2001 stands automatically vacated. Let a copy of this order be sent to the court below forthwith.

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