

**Meena Devi. Vs. the State of Bihar.**

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**Court :** Patna

**Decided On :** Sep-08-2010

**Judge :** Rakesh Kumar, J.

**Acts :** Code of Criminal Procedure (CrPC) - Sections 482, 319, 161; Indian Penal Code (IPC) - Sections 147, 341, 323, 447

**Appeal No. :** CRIMINAL MISCELLANIOUS No.15108 OF 1999

**Appellant :** Meena Devi.

**Respondent :** The State of Bihar.

**Advocate for Def. :** Mr. Shiwesh Chandra Mishra, Adv.

**Advocate for Pet/Ap. :** Mr. Jagdish Prasad Bhagat, Adv.

**Judgement :**

1. The sole petitioner, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 4.6.1999 passed by Sri P.H.Ram, Judicial Magistrate, Ist Class, Purnea in G.R. No.3013 of 1994 arising out of Barhara P.S. Case No.68 of 1994. By the said order, while exercising power under Section 319 of the Code of Criminal Procedure, the learned Magistrate has summoned the petitioner to face trial along with other accused persons.

2. Short fact of the case is that a case was instituted on 30.10.1994 vide Barhara P.S. Case No.68 of 1994 for the offence under Sections 147, 341, 323, 447 of the Indian Penal Code against six named accused persons including the petitioner. However, after investigation, charge sheet was submitted against number of accused persons, but the petitioner was not sent up for trial. After submission of charge sheet, the learned Magistrate took cognizance of the offences and while evidence was going on, a petition under Section 319 of the Code of Criminal Procedure was filed on 5th January,1999 by the prosecution with a prayer to summon the petitioner to face trial along with other accused persons. It was asserted by the prosecution that number of witnesses, during their deposition, had stated indicating direct involvement of the petitioner. On behalf of the petitioner, a rejoinder was also filed before the court below and it was categorically refuted that the witnesses, who had deposed during the trial against the petitioner, had not made such statement during investigation in their statement recorded under Section 161 of the Code of Criminal Procedure. Accordingly, it was prayed to reject the petition. However, after hearing both the parties, by order dated 4.6.1999, the learned Magistrate has allowed the petition filed by the prosecution and summoned the petitioner to face trial along with other accused persons.

3. Shri Jagdish Prasad Bhagat, learned counsel appearing on behalf of the petitioner has argued that on the basis of such contradictory statement, the learned Magistrate was not required to summon the petitioner, that too, at such belated stage. It was further submitted that offence alleged in the case was not very serious in nature and for such trivial offences; the learned Magistrate was not required to summon the petitioner to face trial along with other accused persons. Accordingly, it has been prayed to set aside the impugned order.

4. Shri Shiwesh Chandra Mishra, learned Additional Public Prosecutor appearing on behalf of the State, has opposed the prayer of the petitioner.

5. Besides hearing learned counsel for the parties, I have also perused the materials available on record including the impugned order. It is true that under Section 319 of the Code of Criminal Procedure, the trial court has got ample power to summon a person, who is not an accused to face trial, if during evidence,

sufficient materials are brought on record showing involvement of particular person. However, time without number, it has been held that this power is to be exercised sparingly and not as a matter of course. In the present case, it has been noticed that occurrence had taken place in the year 1994. In the case, allegation was for commission of offence under Sections 147, 341, 323 and 447 of the Indian Penal Code. The allegation appears not to be very serious. Moreover, the matter had remained pending for a long time. The impugned order was passed in the year 1999 in an occurrence, which had taken place in the year 1994. The said order was challenged before this Court by filing the present petition, which was admitted for hearing on 8.9.1999. While admitting the case, so far as petitioner is concerned, the trial was directed to remain stayed and the order of stay is still continuing.

6. In the facts and circumstances of the present case, at this belated stage, it would not be appropriate to direct the petitioner to face trial in an occurrence, which had taken place on 30.10.1994. Even learned Magistrate, while allowing the petition, had noticed the argument advanced on behalf of the petitioner that depositions of the witnesses were not in accordance with their statements, which were recorded under Section 161 of the Code of Criminal Procedure during the investigation.

7. In view of the facts and circumstances particularly allegation of trivial nature, this Court is inclined to interfere with the impugned order.

8. Accordingly, the order dated 4.6.1999 passed by Sri P.H. Ram, Judicial Magistrate, 1st Class, Purnea in G.R. No.3013 of 1994 is hereby set aside and petition stands allowed.

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