

IN THE HIGH COURT OF JHARKHAND AT RANCHI.
Cr. M.P. No. 679 of 2007

Ram Tahal Chaurasia ... Petitioner

Versus

State of Jharkhand & another ... Respondents

Coram : HON'BLE MR. JUSTICE D.N.UPADHYAY

For the petitioner : Mr. K.P.Deo

For the State /opposite party : Addl.P.P.

CAV on 27.7.2012

Pronounced on **31/8/2012**

This Criminal Misc. Petition has been filed for quashing the order dated 23.4.2007 passed by the learned Additional Sessions Judge (FTC IV), Deoghar, in connection with Sessions Case No. 282 of 2002 whereby the petitioner and five others were arrayed as accused under section 319 of the Code of Criminal Procedure and non-bailable warrant of arrest has been issued against them .

2. The prosecution case, in short, is that the deceased Shyam Sundar Chaurasia who happens to be the father of the informant was working as Advocate's Clerk in Civil Court Deoghar . On 23.5.2000, as usual, he left home for going to court, but did not return home even during night. On the next date at 11.00 a.m. the police informed about the dead body of Shyam Sundar Chaurasia to the informant and other family members whereafter fard beyan of Dinesh Chaurasia (Modi) was recorded. The informant raised allegation against accused

Parikshit Modi, Ram Tahal Chaurasia and Mahendra Modi in the alleged murder and as such Deoghar (Mohanpur) P.S. Case No. 109 of 2000 was registered against the said accused persons and after completion of the investigation, charge sheet against the accused Parikshit Modi was filed.

3. In course of trial, PW2 Ram Prasad Chourasia, PW3 Bharat Chourasia and PW5 Birju Mandal have named the present petitioner and five others and described their involvement in the alleged murder of Shyam Sundar Chaurasia. PWs 2 and 3 have clearly stated that they had seen the aforesaid persons namely Ram Tahal Chaurasia, Mahendra Mandal, Rajhans Modi, Basant Modi, Sanjay Modi and Santosh Modi forcibly kidnapping Shyam Sundar Chourasia (deceased) in a Maxi Taxi from Baijnathpur chowk and on the next day, dead body of the deceased was detected. After such evidence was adduced, Addl.P.P. filed a petition under section 319 Cr.P.C. to array the petitioner and the said five named persons as accused to face trial. Learned Addl. Sessions Judge, (FTC) IV, Deoghar after hearing the parties and considering the evidence on record has passed the impugned order and directed issuance of non bailable warrant against them to secure their attendance to proceed with the trial against them too.

4. It is submitted that the prosecution witnesses (PWs2 and 3) are none else, but brothers of the deceased, but they have not disclosed such story before the police in course of

investigation and they have created a new story in course of trial by deposing that the deceased was kidnapped by the aforesaid persons from Baijnathpur chowk (Deoghar). Learned Sessions Judge has erred in appreciating the evidence before passing the order under section 319 Cr.P.C. Learned Addl. Sessions Judge has also arbitrarily issued non bailable warrant of arrest against the petitioner and five other persons. Before passing such order, the petitioner was never summoned to put forth his stand and he was not given opportunity of hearing; the impugned order is erroneous and illegal and therefore liable to be quashed.

5. Learned counsel for the opposite party has raised objection and submitted that the Learned Sessions Judge has committed no error in passing the impugned order.

6. I have gone through the materials placed before me and the impugned order. In a petition filed under section 482 of the Code of Criminal Procedure, the evidence adduced by the prosecution on the basis of which impugned order under section 319 Cr.P.C has been passed, cannot be discussed; rather, the legality of the order is to be viewed. It appears that the learned Additional Sessions Judge has passed the impugned order on the basis of the evidence adduced by PWs. 2, 3 and 5 in which the aforesaid witnesses have described the role played by the petitioner and his associates in the alleged kidnapping of the deceased. Learned court below has directed to issue non bailable warrant of arrest against the petitioner and his

associates for securing their attendance.

7. Section 319(2) Cr.P.C. speaks that 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. Therefore, the intention of the court is only to secure attendance of the petitioner and others who have been arrayed as accused under section 319 Cr.P.C. Section 319(2) Cr.P.C. gives right to the court that the accused arrayed under section 319 Cr.P.C may be arrested and for the purpose of arresting any accused, issuance of warrant of arrest is required. The next option to the court to secure attendance of the accused is that he/they may be summoned.

8. Considering the submissions advanced by the learned counsel for the petitioner, I feel inclined to give liberty to the petitioner to appear before the court within four weeks from the date of this order if he has not appeared till the date, and if he appears, appropriate order shall be passed against him to secure his future attendance during trial .

With the above modification in the impugned order, this Cr.Misc. Petition stands dismissed.

(D.N.Upadhyay,J)

Ambastha/