

JITENDRA NATH MISHRA

v.

STATE OF U.P. & ANR

(2022 gi Criminal Appeal No. 978)

JUNE 02, 2023

[DIPANKAR DATTA AMASUNG PANKAJ MITHAL, JJ.]

Code of Criminal Procedure, 1973 – s.319 – Held – gi makhada sakti sijinnaba: u/s.319 sakti sijinnabagi tangaifadaba adu karino hairabadi recordta leiriba khudam-changdam aduda meei amana crime chatthabada saruk yakhi haibadu utkadabani amasung hairiba meei adu, accuse ama oina puthoktrabadi, hannana puthokkhraba accuse aduga loinana trial chatthagani – Adum oinamak, courtna trial ama chatthabada, karigumba s.319 na piriba sakti adu challaininglabadi, sommon pigadouriba meei adu chennabagi khudam-changdam kharadi recordta lakle haina loubakhaktada mechanical oina thabak touroidabani; order adugi mamangda leiba satisfaction adu charge ama frame toubagi tangakta semkhiba prima facie dagi hangadabani amasung khudam-changdam adu satisfactiongi chang youna, karigumba aranbani haina uttrabadi, maral leire haina laothokkani – Chathariba case asida, FIR aduna ‘D’ ama, mahakki mayamba/manao (appellant) amasung sakkhangdaba meei aduna chatthakhiba ainna yadaba thabak adu fongdokli – ‘D’ amasung appellant aduna chatthakhiba tamthiba thouong adu marik chumna takkhi amasung makhoina sijinnakhiba wahei-watasing aduna complainant amasung mahakki loinabigi jati-kanglupu sokhankhi – appellantna crime aduda chennabagi wafam adu courtta ahanba oina pukhatlakpa oikhide – Asumna, FIR da appellant adugi maming yaodraba, masikhakna warep loubayakhide – Appellant adu ‘D’ gi machin-manaoni laothokklaba amasung mahakpu assailant ama oina maming pallabadi, requisite satisfaction semnaba machak adu leite haiba yaroi – appellant adu ‘D’ ga loinana trial chatthanabagi summon pidringei mangoanana Special Courtna requisite satisfaction semkhi – Special Courtki orderbu ayaba piriba impugned order adu aranba oiba yaroi – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – ss.3(1)(r), (s) – Penal Code, 1860 – ss. 419, 420, 323, 406, 506.

Hardeep Singh v. State of Punjab (2014) 3 SCC 92 :

[2014] 2 SCR 1 – mateng loukhiba.

3. Tangkak asida, appellant adubu Dharmendraga loinana Sections 323, 504 amasung 506, IPC amasung 1989 Act ki 3(1)(r) & (s) ki makhada cheirak fangba yaba maral leibagidamak trial tounanaba summon piraduna Special Courtna tang 16.10.2021 da order adu pass toukhi. Hairiba tang 16th October, 2021 adu High Courtki mamangda appellant aduna singnarakkhiba adu mai pakkhide, madu magi 1st June, 2022 da thokkhiba ordena maram oiduna, mathakta pankhibagumna 1989 Act ki Section 14A(1) gi makhada appellant adugi appeal adu dismissed toukhi.

4. Appellantki maikeida lepliba Mr. Pandey, learned counsel na asumna wakatlakkhi:

(i) FIR adu ka henna mtam thengthakhi. Adum oinamak FIR adugi hourakpham oiriba meeot meenei amasung tamthiba thouong adu 30th September, 2017 da chingnaningai oina thokkhi, complainant aduna wakat yamna thengna 28th February, 2018 da pikhatlakkhi. Asigumba thengna thangatlakkhiba wakatki oina matik chaba maram leite amasung masi FIR aduda yaoribasing asu tasengnamak aranbani haina takpaga khudam amani.

(ii) PW-1 & PW- 2 gi versionsingda taionnaba wafamsing thengnakhi. PW-1 na fongdokkhi madudi Dharmendra, mahakki mayamba/mana (haibadi appellant adu) amasung sakkhangdaba meei amana carda laktuna PW-1 amasung mahakkii imung-manunggi meeoisingbu khamkhi, makha tarakpada chingnaningai oiba meeot meenei amasung tamthiba thoudok adu thokkhi, PW-2 na fongdokkhi madudi accused oiriba meeoising (Dharmendra, appellant amasung sakkhangdaba meei) adu thoudok thokfamda motorcycle ani tonglaga thunglakhi. Maram asina PW-1 & PW-2 gi wafamsing adu tasengnamak yumfam yaode amasung thajaningai oide.

(iii) PW-1 & PW-2 gi versionsingda asumna fangkhi madudi 2015 dagi houna, makhoina appellant adubu masak khang; asumna, FIR da appellant adugi maming pandaba amasung madugi mahutta Dharmendragi mayamba/manaobusu hakthengnana chingnaningai oiba meeot meenei amasung tamthiba thouong adu chatthabada saruk yakhi haina fongdokkhiba amasung khudam-changdam record toubagi matang khaktada appellantki ming adubu co-accused ama oina sijinnaba asi tasengna semjin sajinba warini, masi appalant adubu maram chadaba trial thengnahanduna awafamda chingthanaba hotnaba thouongni.

(iv) Appellant amasung Dharmendra asi machin manaoni haibadi achumbani; adubu makhoigi atoppa machin-manao ahum leiri. Krigumba appellant adu co-accused nayamgi manungda ama tasengna oirabadi, karigidamak complainant aduna masak munna khanglaba appalant adubu maming pandribano haibagi maram adu defy touri amasung Dharmendragi mayamba/manaonasu complainant aduda meeot meenei amasung tamthiba thouong chatthakhi haibasi mayek sengna uttri.

(v) Krigumba PW-1 & PW-2 gi maraktagi amana makhoigi warol adu pathoklabadi makhoigi versionsinggi aranba adu uba fanggani. Trial asigi

hourakpham oiriba thoudok asi 30th September, 2017 gi 6.00 pm da thokkhi, masi Dussehragi numit takhi. Adum oinamak, accused oiriba meeoising aduna meeyam tinba mafam amda complainant amasung mahakki loinabida makhoina mayumda hallakpa matamda meeot meenei amasung tamthiba thouong chatthakhi haibasi chingnaningai oikhi, meeot meenei amasung tamthiba thouong chatthakhiba prosecution case asigi khudam-changdam pinaba atoppa meeo amata thoklakkhide. Asumna masi lanna uhanbani haibadu mayek single.

5. Asigumba chayetnaba wafam asida yumpham oiraga, Mr. Pandeyna wakatlakhi madudi Section 319, Cr. gi makhada Special Courtna sakti sijinnariba adu arbitrary oi amasung High Courtna appellate jurisdiction sijinnabada asigumba order asida chennadabagi matangda aingi oiba natraga asengba-achumbasinggi matangda asoiba toukhi. Mahakna, asumna High Court na 1st June, 2022 da laothokkhiba maramna, 16th October, 2021 gi orderbu chatnahandanaba haijakhi.

6. Appeal asigi maiokta, State of Uttar Pradesh ki mahut silliba Mr. Singh, learned senior counselna yaningdaba fongdokkhi madudi accused amaga loinana meeo amabu trial toubagi summon pibaga mari leinaba ain adu makha tana *res integra* oidre. **Hardeep Singh vs. State of Punjab:** (2014) 3 SCC 92 ki Court asigi Constitution Benchki warepta mahakna eikhoigi pukning chingsinkhi amasung maduda yaoriba paragraphs 106, 117.4 amasung 117.6 ki mateng loukhi. Mhakki yaningdabagi wafam adudi Special Court aduna complainant amasung mahakki loinabina piba chinna haiba khudam-changdam adu munna khannakhi amasung Section 319, Cr. PC gi makhada appellant adubu summon toukhi; asumna, asigumba order asi ainna yadaba thengnade, patent illegality oibagi chang hanthei. Mahakna makha tana yaningdaba fongdokkhi madudi appellantna impugned order adubu chatnahandanaba pukhatlakliba wafam adu Special Courtki mamangda defence ki pukhatpa yaba wafamni. Mahakki matung inna, Special Courtki summon toubagi order adu ayaba piriba High Courtki impugned order adu aduda yetnaba amata leitre amasung, asumna mahakna appeal adubu chatnahandanaba haijakhi.

7. Eikhoina partysinggi wafam taba fangle amasung recordta leiriba machaksing adu ningthina neinare.

8. Rival claimsing adu khannanabagi ayaba piraduna, eikhoigi wakhallonda leiri madudi appellantka mari leinana pukhatlakliba wafam khudingmak neinaba matamda eikhoigi expression amahektana michang-meekhai naibagi maong ama lakpa yai; amasung masina maram oiduna fair trial ama oithokpa wagani, cheksinba khongthang ama loukhattuna complainant amasung mahakki loinabina makhoigi warol record touba matamda pikhiba khudam-changdam aduna Supreme Courtna thokkhiba order adu achumbani haina utpra hairiba wahang asida maru oina eikhoigi considerationbu athingba thambinaba eikhoina hanggatchari.

9. Section 319, Cr. PC, discretionarygi sakti ama piriba asina, karigumba khudam-changdamda piribagi matung inna meeo amabu crime tourubagidamak trial chatthariba accused aduga loinana trial tougani hairabadi, accused ama oina uttaba natraga pandaba meeo ama

hektagi mathakta trial chatthanaba courtta sakti piri. Asigumba sakti court *qua* na FIR da maming yaodaba meei ama, natraga FIR da maming yaoba adubu charge-sheetta accused ama oina uttaba meei amagidamak sijinnaba yai. Maram asina, section 319, Cr. PC gi makhada sakti challaibagi tangaifadaba adudi recordta leiriba khudam-changdam aduda meei amana crime adu chatthabada saruk yakhi haiba utkadabani amasung accused ama oina puthoktriba, hairiba meei adu hannana puthoklaba accused aduga punna trial chatthagani. Adum oinamak courtna trial ama chatthabada, karigumba section 319, Cr. PC na piriba sakti adu challaininglabadi, sommon pigadouriba meei adu chennabagi khudam-changdam kharadi recordta lakle haina loubakhaktada mechanical oina thabak touroidabani; madugi matung inna order adugi mamangda leiba satisfaction adu charge ama frame toubagi tangakta semkhiba *prima facie* dagi hangadabani amasung khudam-changdam adu satisfactiongi chang youna, karigumba aranbani haina uttrabadi, maral leire haina laothokkani.

10. Chathariba case asida, FIR aduna Dharmendra, mahakki mayamba/manao amasung sakkhangdaba meei aduna chatthakhiba ainna yadaba thabak adu fongdokli. Complainant amasung mahakki loinabibu, courtki mamangda sakhi piba matamda, Dharmendra amasung appellantna ahanbagi meei asida chatthakhiba meeot meenei amasung Dharmendra amasung appellantna sijinnakhiba wahei-wata adu sandokna takkhi, *inter alia* oina complainant amasung mahakki loinabigi jati-kanglup adu sokkhi. Yamdrabada, matang asida, *prima facie* da chayetnaba amata leitabagum ukhi. Case asigi FIR asi complainant aduda meeot meenei amasung tamthiba thouong chatthakhiba Dharmendragi mateng pangkhiba Dharmendragi mayamba/manaogi matangda karisu chennadaba oide natraga allegationsing adu Dharmendrakhakki oiba kanasu chennadaba oikhide. Dharmendragi mayamba/manaona crime aduda chennabagi wafam adu courtta ahanba oina pukhatlakpa oikhide. Achumbadi masini, appellant adu FIR da maming pankhide; adubu madukhakna waroisin oibadi yaroi. Appellant adu Dharmendragi machin-manaoni laothoklaba amasung mahakpu assailant ama oina maming pallabadi, requisite satisfaction semnaba machak adu leite haiba yaroi. Section 319, Cr. PC gi makhada order ama pass tounabagidamak, **Hardeep Singh** (supra) da yaoriba decisongi paragraph 106 ta taklibagi matung inna satisfaction ama semnabagidamak mapung fare. Asengba achumba amasung hiramasing asi eikhoina apenba pokchare, madudi appellant adu Dharmendraga loinana trial chatthanabagi summon pidringei mangoinana Special Courtna requisite satisfaction semkhi.

11. Hiramsgigi matangda mityengda, tang 16th October, 2021 gi Special Benchki order amasung tang 1st June, 2022 gi High Courtki impugned order aduna madu aranba natte haina khanghankhre.

12. Houjik faobagi oina FIR thengna register toubaga mari leinaba pointsinggi oinadi, complainant amasung mahakki loinabigi versionsinggi machakta taionnariba, sakhi oina atoppa meei amatana yaodabaga loinana complainant amasung mahakki loinabi adu 2015 dagi appellant aduga masak khangnei haibasiga mari leinana, masimak appellant aduna proceeding chatharingeida Special Courtki mamangda taksillaknaba hangduna thamli.

13. Appeal aduda merit yaode, amasung madu dismiss toukhi.

14. Special Court na trialda maruoiba mityeng thamnaba pukning thoughtli. Adubu, thouong aduda, High Court amasung masigi Court asina achumbani haina rai takhraba Section 319, Cr. PC gi makhada magi order adugi maram aduna safu pidana chatthagadabani. Mathakta record toukhiba Appellant adugi maikaidagi pukhatlakliba pointsing, karigumba atoppa pointsingga loinana magi mamangda pukhatlaklabadi, madu chap manana mathou taba consideration pigani.

15. Appeal asi dismiss toubagi matangda, application adugi matangda warep lounaba karigumba amata leite. Chap manaba atoppa application amahektagisu, karigumba leirabadi, dismiss tougani.