

SUPREME COURT OF INDIA

Dhrup Singh

Vs.

State of Bihar

S.L.P.(CrI) No.7679 of 2012

(K.S. Radhakrishnan and Dipak Misra JJ.)

08.04.2013

JUDGMENT

K. S. RADHAKRISHNAN, J

1. We are, in this case, concerned with the question whether the Chief Judicial Magistrate is right in issuing the summons to the petitioners who were named in the FIR, but not in the charge-sheet. The order passed by the Chief Judicial Magistrate in A.U.P. No.572 of 2011 dated 18.04.2011 was challenged by the petitioners before the High Court, without any success, against this special leave petition has been preferred.

2. We notice that cognizance has been taken by the Magistrate vide its order dated 8.4.2011 against the petitioners for offences under Section 302/34 IPC read with Section 27 of the Arms Act. Counsel for the petitioners submitted that the learned Magistrate was not justified in invoking Section 319 of the Code of Criminal Procedure (Cr.P.C.) since the petitioners were not charge-sheeted by the police after conducting the investigation. Learned counsel pointed out that so far as those persons against whom charge-sheet has not been filed they can be arrayed as accused persons in exercise of powers under Section 319 Cr.P.C. only when some evidence or materials are brought on record in the course of trial. Learned counsel also referred to the Judgment of this Court in Hardeep Singh v. State of Punjab and others (2009) 16 SCC 785 and submitted that an identical question came up for consideration before the two Judge Bench of this Court and in view of the conflicting views expressed by two Judge Bench in Mohd. Shafi v. Mohd. Rafiq and another (2007) 14 SCC 544 and a two Judge Bench in Rakesh and another v. State of Haryana 2001(6) SCC 248, the matter was referred to a larger Bench and

the same is pending consideration. In such situation, learned counsel submitted that this case also may be referred to a larger Bench.

3. Mr. Gopal Singh, learned counsel appearing for the respondent-State, on the other hand, placed reliance on a subsequent Judgment of this Court in *Uma Shankar Singh v. State of Bihar and another* (2010) 9 SCC 479 and stated that such a request was declined by this Court stating that even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon.

4. We notice that in this case the petitioners have been named in the FIR and learned Magistrate after perusing the FIR, case diary and the death report came to a prima facie conclusion of the involvement of all the persons named in the FIR in the occurrence. Learned Magistrate expressed the view that there are enough materials to initiate prosecution against them apart from the charge sheeted accused persons. The High Court has also concurred with that view. In such a situation, we find no good reasons to take a different view from that of the learned Magistrate as well as that of the High Court. Hence, this special leave petition lacks merit and the same is dismissed.