

GAHC010055512021



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : Crl.Pet./219/2021

OSMAN GONI
S/O LATE KINU BEPARI, VILL- MAMUDPUR, RAJARGHOR, P.S.-MATIA,
DIST- GOALPARA, ASSAM, PIN-783125

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:NAZMUL HOQUE
S/O LATE HAJI MIZANUR RAHMAN
VILL- MAMUDPUR
P.S.-MATIA
P.O.-DALGOMA
DIST- GOALPARA
ASSAM
PIN-78312

Advocate for the Petitioner : MR H R A CHOWDHURY

Advocate for the Respondent : PP, ASSAM

:: BEFORE ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

O R D E R

21.03.2024

Heard Mr. N. Uddin, the learned counsel appearing for the petitioner as well as Mr. R.J. Baruah, the learned Addl. Public Prosecutor, Assam representing Respondent

No.1.

2. None appears for the Respondent No.2 even after service of notice.
3. This is an application under Section 482 of the CrPC challenging the order dated 09.01.2018, 19.03.2018 and 01.09.2018 passed by the learned Addl. Sessions Judge, Goalpara in Sessions Case No.155/2014.
4. On 09.01.2018, the Public Prosecutor filed an application being Petition No.568/2017 requesting the court to summon some persons as accuseds under Section 319 of the CrPC.
5. On 19.03.2018, the court directed issue of summons to those persons.
6. On 08.05.2018, those persons namely- Md. Mazibar Rahman @ Master, Md. Piar Ali Ahmed@ Piaruddin, Md. Abdul Rashid @ Abdur Rashid and Osman Gani appeared before the trial court.
7. Thereafter, on 01.09.2018, the trial court framed the charges under Sections 149/326/427 and 302 of the Indian Penal Code against Mazibar Rahman, Piar Ali Ahmed, Abdul Rashid and Osman Gani.
8. In the meantime, Mazibar Rahman, Md. Piar Ali Ahmed and Abdur Rashid filed an application under Section 482 of the CrPC before this Court. This Court on 03.02.2021, in Criminal Petition No.1112/2018, held that the trial court illegally issued summons to Mazibar Rahman, Md. Piar Ali Ahmed and Abdur Rashid and set aside the orders impleading them as accuseds in Sessions Case No.155/2014.
9. Now, Osman Gani has filed this petition stating that he has been illegally impleaded in Sessions Case No.155/2014.
10. I have considered the submissions made by the learned counsel of both sides.
11. At this stage, a brief visit to Section 319 of the CrPC would be fruitful. Section 319 of the CrPC reads as under:

“Section 319 – Power to proceed against other persons appearing to be guilty of offence –

1. Where, in the course of any inquiry into, or trial of, an offence, it appears from the

evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

2. 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.
3. Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
4. Where the Court proceeds against any person under Sub-Section (1) then-
 1. the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;
 2. subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

12. In *Labhuji Amratji Thakor v. State of Gujarat*, (2019) 12 SCC 644 , the Hon'ble Supreme Court held as under:

“13. The High Court does not even record any satisfaction that the evidence on record as revealed by the statement of victim and her mother even makes out a *prima facie* case of offence against the appellants. The mere fact that the Court has power under Section 319 CrPC to proceed against any person who is not named in the FIR or in the charge-sheet does not mean that whenever in a statement recorded before the Court, name of any person is taken, the Court has to mechanically issue process under Section 319 CrPC. The Court has to consider substance of the evidence, which has come before it and as laid down by the Constitution Bench in *Hardeep Singh [Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] has to apply the test i.e. “more than *prima facie* case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebuted, would lead to conviction.”

13. Coming back to the case in hand, there is no doubt that a trial court can proceed against any other persons appearing to be guilty of any offence if there is sufficient evidence to that effect. In the instant case, the order dated 09.01.2018 shows that the trial court issued summons to the present petitioners and some other

persons only after prosecution counsel filed an application. The order dated 09.01.2018, or the order dated 19.03.2018 and the order subsequent orders thereto clearly show that the learned trial court never exercised judicial mind while issuing summons to the present petitioner and some other persons. The power vested upon a court under Section 319 of the CrPC is a discretionary one and depends upon the satisfaction of the court. In the case in hand, the trial court mechanically issued summons to the present petitioner on being prayed by the prosecution counsel. It goes to show that the trial court has not exercised judicial mind.

14. Now, this Court is of the opinion that the impugned orders impleading the present petitioner Osman Gani are bad in law and are liable to be set aside. Therefore, the orders impleading Osman Gani in Sessions Case No.155/2014 is set aside.

15. The criminal petition is allowed and disposed of accordingly.

The interim order passed on 26.03.2021 stands vacated.

JUDGE

Comparing Assistant