

IN THE HIGH COURT OF SIKKIM

ORDER SHEET

Criminal RevisionNo. 16 of 16/9/ 2003


Kashi Kant Jha

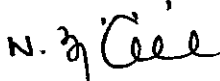
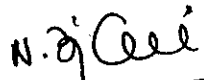
.....Petitioner/Appellant

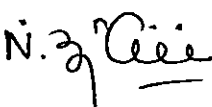
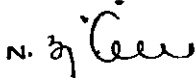
Versus

State of Sikkim

.....Respondent



Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	25.8.2003	<p>Heard Mr. S: K. Home Choudhury, learned Senior Counsel assisted by Miss Sapna Rai, learned Counsel for the accused/petitioner and Mr. J. B. Pradhan, learned Additional Public Prosecutor assisted by Mr. Karma Thinlay, learned Assistant Govt. Advocate for the State - respondent.</p> <p>Upon hearing Mr. Choudhury, learned Senior Counsel at some length, I am of the view that the related case diary is necessary and essential at this stage, and that being the position, learned Additional Public Prosecutor shall produce the case diary on 10.9.2003. The matter be listed on the said date for further orders.</p> <p style="text-align: right;">  (N: S. Singh) Judge <u>25.8.2003</u> </p>	<p style="text-align: right;">11.9.03 Case diary received at/</p>

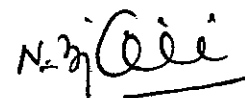
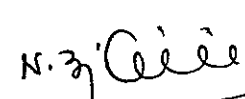
Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
2.	10.9.2003	<p>As prayed for by the learned Counsel for the parties, list it tomorrow, i.e. on 11.9.2003.</p> <p style="text-align: right;">  (N. S. Singh) Judge 10.9.2003 </p>	
at/ 3.	11.9.2003	<p>Heard Mr. S. K. Home Choudhury, learned Senior Counsel assisted by Miss Sapna Rai, learned Counsel for the accused/petitioner. Also heard Mr. N. B. Khatiwada, learned Public Prosecutor assisted by Mr. J. B. Pradhan, learned Additional Public Prosecutor for the State - respondent.</p> <p>Mr. N. B. Khatiwada, learned Public Prosecutor sought for some time so as to enable him to produce the charge sheet. The request is reasonable. In the meantime, further proceeding of Criminal Case No.15 of 2002 pending in the Court of the learned Sessions Judge, Special Division-II, Sikkim shall remain suspended.</p> <p>List it on 25.9.2003 for necessary orders.</p> <p style="text-align: right;">  (N. S. Singh) Judge 11.9.2003 </p>	
at/			

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
4.	25.9.2003	<p>Heard Mr. S. K. Home Choudhury, learned Senior Counsel assisted by Miss Sapna Rai, learned Counsel for the accused/petitioner and Mr. N. B. Khatiwada, learned Public Prosecutor assisted by Mr. J. B. Pradhan, learned Addl. Public Prosecutor for the State respondent.</p> <p>As prayed for by the learned Counsel for the parties, list it on 6.11.2003 for necessary orders.</p> <p style="text-align: right;">  (N. S. Singh) Judge 25.9.2003 </p>	
5.	6.11.2003	<p>Heard Miss Sapna Rai, learned Counsel for the accused/petitioner and Mr. Karma Thinlay, learned Assistant Govt. Advocate for the State-respondent.</p> <p>As prayed for by Miss Sapna Rai, learned Counsel for the accused/petitioner, the matter be listed on 1.12.2003 for necessary orders.</p> <p style="text-align: right;">  (N. S. Singh) Judge 6.12.2003 </p>	

at/

at/

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order	
6.	1.12.2003	<p>A prayer has been made by Miss Sapna Rai, learned Counsel for the accused/petitioner for adjournment of this case at least for a week. This is not objected by Shri N. B. Khatiwada, learned Public Prosecutor who is assisted by Shri J. B. Pradhan, learned Additional Public Prosecutor for the State-respondent.</p> <p>List this case on 8.12.2003 for necessary orders.</p> <p style="text-align: right;">  (N. S. Singh) Judge 1.12.2003 </p>		
at/	7.	8.12.2003	<p>Heard Mr. S. K. Home Choudhury, learned Senior Counsel assisted by Miss Sapna Rai, learned Counsel for the accused/petitioner and Mr. N. B. Khatiwada, learned Public Prosecutor assisted by Mr. J. B. Pradhan, learned Addl. Public Prosecutor for the State-respondent.</p> <p>As prayed for by the learned Counsel for the parties, list it on 12.03.2003 for necessary order.</p> <p style="text-align: right;">  (N. S. Singh) Judge 8.12.2003 </p>	

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
8.	12.3.2004	<p>Heard Shri S. K. Home Choudhury, learned Senior Counsel assisted by Miss. Sapna Rai and Shri S. P. Wangdi, learned Senior Advocate assisted by Shri J. B. Pradhan, learned Public Prosecutor for the State/ respondent. Judgment reserved.</p> <p style="text-align: center;">  (N. S. Singh) Judge </p>	<p><i>Read Case diary on 18/3/04. 4/3/04</i></p>
9.	15.3.2004	<p>Judgment pronounced vide, separate sheets.</p> <p>The revision is devoid of merit and accordingly, it is dismissed, but no order as to costs.</p> <p style="text-align: center;">  (N. S. Singh) Judge </p>	<p><i>A certified copy of Judgment forwarded to trial Court on 15/3/04. 15/3/04</i></p>

F.R. 3/02

IN THE HIGH COURT OF SIKKIM

Criminal Revision No.16 of 2003

Kashi Kant Jha
S/O Sri Kedar Jha,
R/O Tadong,
Gangtok. **Accused/petitioner.**

Versus

State of Sikkim **Respondent.**

Coram : The Hon'ble Shri Justice N. Surjamani Singh, Judge.

Present : Mr. S. K. Home Choudhury, Senior Advocate
assisted by Miss Sapna Rai, learned Counsel
for the accused/petitioner.

Mr. S. P. Wangdi, Senior Advocate assisted by
Mr. J. B. Pradhan, Public Prosecutor for the
State/respondent.

Date of Hearing : 12th March, 2004.

Date of Judgment : 15th March, 2004.

J U D G M E N T

Singh, J.

The order dated 06.08.2003, passed by the learned Sessions Judge, Special Division-II. Sikkim, in Criminal Case No. 15 of 2002 is the subject matter under challenge in this revision petition.

2. The accused/petitioner Shri Kashi Kant Jha has been facing trial under Sections 467/468/474/109 of the Indian Penal Code before the Court below. In the course of the trial, 9 prosecution witnesses had already been examined, and in the meantime, the

N. Surjamani Singh

accused/petitioner filed an application dated 18.6.2003 under section 319 Cr.P.C. for taking cognizance of the offence against 3 persons – PW Nos.2, 5 and 6, namely, Madhav Sharma, Navin Dhakal and Bishnu Maya Sharma by contending inter alia, that the PW No.5, Navin Dhakal had abetted the alleged offence with the accused/petitioner thus attracting a punishment under sections 467/468/474 read with 109 IPC and whereas PW Nos. 2 and 6, namely, Madhav Sharma and Bishnu Maya Sharma were having the possession of the forged documents Exhibit P-16 and Exhibit P-18 thus attracting sections 467, 468, 471, 474, 109 and 34 IPC, and that being the position, the present accused/petitioner sought for taking an appropriate action against the said 3 persons/prosecution witnesses mentioned above as per section 319 of the Code of Criminal Procedure. The said petition was rejected by the learned court below by holding that no offence has been committed by any of the prosecution witnesses. Being aggrieved by the impugned order dated 06.08.2003, the present accused/petitioner filed this revision petition.

3. Supporting the case of the accused/petitioner, Mr. S. K. Home Choudhury, learned Senior Counsel contended that there is sufficient evidence on record for establishing the abetment of the alleged offence by the PW No.5, Navin Dhakal and apart from that, the names of Bishnu Maya Sharma, PW No.6 appears in the related FIR dated 22.9.2001, which speaks that prima facie case is made out against Smt. Bishnu Maya Sharma for committing the offence under section 468/120-B IPC, but she was dropped from the case by the investigating machinery without any justification. The learned Senior Counsel also argued that sufficient materials

N. S. Choudhury

on record are available for establishing the fact that PW 2, Madhav Sharma and PW 6, Bishnu Maya Sharma were having the possession of alleged forged document Exhibits P-16 and P-17, and that being the position, the learned Court below ought to have proceeded against those persons - PWs 2, 5 and 6 for the offence committed by them, and they should be impleaded as co-accused in the case. The learned Senior Counsel relied upon 2 decisions of the apex Court rendered in **Joginder Singh versus State of Punjab reported in (1979) 1 SCC 345** and **Raghubans Dubey versus State of Bihar reported in AIR 1967 S.C. 1167** and contended that, the expression **"any person not being the accused"** in **Section 319 Cr.P.C. does not exclude person dropped under Section 169 Cr.P.C.** and that **once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons and that the summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.** This important legal aspect has been ignored and overlooked by the learned Court below while passing the impugned order Mr. Home Choudhury argued.

4. It is also contended by the learned Senior Counsel that the impugned order passed by the Court below is not tenable in the eye of law, inasmuch as, the learned Court below ought to have

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allowed the petition of the accused/petitioner under section 319 of the Code of Criminal Procedure.

5. At the hearing, Mr. S. P. Wangdi, learned Senior Advocate appearing for the State, contended that there is no infirmity or illegality in the impugned order, and, as such, no interference of it is called from the ends of this Court.

6. Now this Court is to see and examine as to whether the impugned order suffers from illegality, impropriety or incorrectness and whether interference of it is called for by this Court in the light of the existing facts and circumstances of the case or not?

7. I have perused the impugned order and also available materials on record. I have also considered the submissions advanced by the learned Counsel appearing for the parties.

8. From the submissions advanced by Shri S. K. Home Choudhury, learned Senior Counsel, to the effect that PW No.5, Shri Navin Dhakal had abetted alleged offence attracting punishment under sections 467, 468, 474 read with 109 IPC and the impleadment of the said PW No.5 as co-accused in the case, it appears to me that whether it is the case of the accused/petitioner Shri Kashi Kant Jha that he had committed the offence and likewise, PW No.2 and PW No.6 were having the possession of the alleged ^{forged} ~~false~~ documents Exhibits P-16 and P-18 with the help of the accused/petitioner (See - Petition dated 18-6-2003, under section 319 Cr.P.C.) or, whether it is a case of total denial ! The related submissions were made/advanced by Shri S. K. Home Choudhury, learned Senior Counsel on the basis of the available

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materials on record, including the statements/depositions of the PW Nos.2, 5 and 6 and the petition under section 319 of the Code of Criminal Procedure; but the defence took the plea of total denial in the course of the trial of the case before the learned Court below.

9. It is well settled that the Court below has wide power to proceed against any other person or persons appearing to be guilty of an offence in terms of the related provisions of Section 319 Cr.P.C. and this is also an accepted principle of law that any person not being the accused within the purview of Section 319 Cr.P.C., does not exclude the person dropped under section 169 Cr.P.C. and apart from that, it is also the duty of the Magistrate or the Court to find out who the offenders really are and the Magistrate or the Court has power and discretion to summon the additional accused which is a part of the proceeding by his taking cognizance of an offence but the court is to see and examine as to whether a prima facie case is made out before initiating such action as required under the related provisions of section 319 of the Code of Criminal Procedure.

10. At this stage, it may be mentioned that the learned Court below was of the view that no offence has been committed by any of the prosecution witnesses, namely, PW Nos. 2, 5 and 6. Supporting this finding, the learned Court below opined thus: -

"I have gone through the evidence of P.Ws.2, 5 and 6 and especially the portion of their evidence which has been extracted by the Ld.Counsel for the petitioner. I have given my thoughtful consideration to their evidence and I find that no case is made out against any of the three

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P.Ws. As regards P.W.2 as per the extracted portion of his cross-examination is as follows: -

"I say Exbt.P16 is my fake certificate because the colour of the original certificate is blue whereas the one supplied to me is in pink colour. Moreover, even after a lapse of considerable time certificate of passing did not come from the board. I came to know about the fake nature of Exbt P.16 after about six/seven months from the date of my joining in the service. I joined in my service on 1st May, 2000. It is true that I did not report to the police when I first came to now that the Exbt. P.16 is the fake certificate."

As per the cross-examination Exbt P.16 is his fake certificate because the colour of the original certificate is blue whereas the one supplied to him by the accused was in pink colour. Further, he has stated that even after a lapse of considerable time certificate of passing did not come from the Board and that he came to know about the fake nature of Exbt P.16 after 6/7 months from the date of his joining the service. Thus it is seen that he did not use the fake certificate provided by the accused for getting into service. Moreover there is not even a whisper that the witness in any way helped the accused for forging any certificate. Similarly P.W.5 Navin Dhakal's evidence is that he failed in graduation in the year 1998 and started looking for job but could not get any job due to very low percentage of marks in his Senior Secondary Examination. He met his friend Deepak Sharma and when he narrated his problem his friend suggested that the accused can improve Secondary examination result by enhancing his marks. He accordingly went and met the accused in his PCO Booth and he was told by the accused that he can enhance his marks in the Certificate of Senior Secondary Examination for which purpose accused demanded a sum of Rs.5000/-. The witness expressed his inability to pay Rs.5000/- and offered to pay him Rs.2000/-. The accused thereafter asked him to furnish his name, address and the marks expected and the witness

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furnished the information required by the accused and also photocopy of All India Senior School Certificate Examination, 1996 Admit Card. The Ld.P.P. submitted that the accused being a teacher the witness in a bonafide belief thought that the accused may be in a position to enhance his marks by re-examination or otherwise and that there is no evidence at all that any forgery had been committed by the witnesses. Similar is the case with P.W.6 Bishnumaya Sharma. I, therefore, find that no offence has been committed by any of the prosecution witnesses and consequently the petition filed by the accused is hereby rejected."

11. From the above findings of the learned Court below, it is seen that the same are based on sufficient materials and, to the satisfaction of the learned Court below. It is further reveal that the opinion formed by the learned Court below is based on materials. In my considered view, the learned Court below had dealt with the matter pros and cons and came to the conclusion that no offence has been committed by any of the prosecution witnesses.

12. Apart from the above discussions and observations pertaining to the scope, application and the power of the Court/or the Magistrate as contemplated under section 319 Cr. P.C., it is to be borne in the judicial mind that an order under this section for proceeding against any person(s) other than the named accused, who appear(s) to have committed offence for which he could be tried together with the named accused, entirely depends on the available facts, circumstances and evidence on record and such order ought to be passed at the earliest and at the proper stage and within a reasonable period of time. In the instant case the FIR was lodged in the year 2001 i.e. on 22nd September 2001, and the

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case to justify the interference with the impugned order passed by the learned Court below.

15. In the result, the revision petition is devoid of merit and accordingly, it is dismissed, but no order as to costs. It is made clear that the learned Court below is to dispose of the case expeditiously in accordance with law. Registry is directed to send a copy of this Judgment to the learned Court below.

N. Surjamani Singh

(N. Surjamani Singh)

Judge

15.03.2004