

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No. 1105 of 2012

Arising out of P.S. Case No. -17 Year- 2011 Thana -
Phulparas District- MADHUBANI

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Devendra Yadav, Son of Jogdhar Yadav, Resident of Village:
Rautiniya, P.S. Phulparas, District-Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Bablu Yadav, Son of Rajkumar Yadav, Resident of Village:
Rautiniya, P.S. Phulparas, District-Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N. Kumar, Adv.

For the Respondent/s : Mr. Dilip Kumar, APP.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 13-02-2015

The Petitioner who is the Informant seeks quashing of the order dated 17.08.2012 passed by the Additional Sessions Judge, Madhubani in S.Tr. No. 417 of 2011 by which he has refused to summon the Opposite Party No. 2 under Section 319 Cr.P.C. even though the witnesses had stated his complicity.

The Petitioner submits that it is only on the plea of alibi such petition was disallowed.

On the other hand, Counsel for the Opposite Party No. 2 submits that after due verification by the Investigating Officer the final report was submitted as against him accepting the plea of alibi and, therefore, the Court below did not commit any illegality not summoning the Opposite Party No. 2.

Considering that plea of alibi is a defense and a question

of fact which can only be decided only during trial, I am of the view that the Trial Court fell in error in not summoning the Opposite Party No. 2 even though witnesses had deposed specifically against him.

In view of such, the order dated 17.08.2012 passed by the Additional Sessions Judge, Madhubani in S.Tr. No. 417 of 2011 is, hereby, set aside.

The Opposite Party No. 2 is directed to appear within four weeks in the Court below failing which strict action shall be taken against him.

The Application stands allowed with the aforesaid observations.

(Anjana Prakash, J)

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