

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45952 of 2012

Arising Out of PS. Case No.-21 Year- 1989 Thana -Bhadaur District- - Patna

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Arvind Kumar Singh @ Rajju Mahto, son of Late Rajeshwar Mahto, resident of
village Chakjalal, P.S. Bhadaur, District Patna

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Ajay Kumar Thakur, Advocate

For the Opposite Party : Mr. Jitendra Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

CAV JUDGMENT

Date: 18-03-2015

The present petition has been filed for quashing the order dated 05.10.2012 passed by learned Additional Sessions Judge-IV, Barh in Sessions Trial No.935 of 94 arising out of Bhadaur P.S. Case No.21 of 1989 by which the learned trial court has rejected the petition filed on behalf of the petitioner under Section 311 of Cr.P.C. for recalling of P.Ws. on the ground of amendment of the charge dated 30.05.2012.

2. It is submitted that the impugned order is not in accordance with law. In view of the charges having been amended by mentioning therein the name of the deceased, Munni Paswan, the prosecution witnesses are required to be recalled for the purpose of cross-examination, as contemplated under section 217 of the Code of Criminal Procedure, which, however, has been denied.



3. This Court is unable to accept the submission of learned counsel for the petitioner. A perusal of the record discloses that the first information report was instituted on the basis of the fardbeyan of the informant, who is none other than the aforesaid Munni Paswan himself, and a case was instituted under Sections 148, 149 and 307 of the Indian Penal Code and Section 27 of the Arms Act. Subsequently, during course of investigation itself Section 302 of the IPC was added and later on, charges were framed on 31.03.1999 under Section 302 of the IPC against the petitioner and under Section 302/149 of the IPC against other co-accused together with Section 27 of the Arms Act.

4. This Court is of the view that merely adding the name of the deceased Munni Paswan in the charge would not strictly amount to alteration of the charge under Section 216 of the Cr.P.C. so as to attract the provisions of Section 217 of the Cr.P.C. Even after such name having been incorporated, the charge continued to relate to the same provisions of law as before and there was no material change in the charge. Even before this Court, nothing has been brought on record, by way of deposition of the witnesses or the charges before and after the so-called amendment, to suggest that the petitioner was not aware that he was being tried in respect of the murder of deceased Munni Paswan. The petitioner has not also

disclosed how, if at all, he has been prejudiced by such addition of name.

5. A perusal of the order dated 30.05.2012, on the other hand, shows that the name of the deceased, Munni Paswan, had been missed to be incorporated in the charge merely through clerical inadvertence. The learned trial court has thus rightly observed that no prejudice has been caused to the defence. This Court takes note that the first information report was registered as far back as in the year 1989. The present petition is clearly nothing more than a dilatory attempt to delay the trial.

6. The petition accordingly stands dismissed.

(Vikash Jain, J)

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