

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4634 of 2013

Arising Out of PS.Case No. -174 Year- 2008 Thana -BEGUSARAI MUFFASIL District-
BEGUSARAI

Jivan Sharma S/o Sanichar Sharma, R/o Vill. Suja, P.S. Begusarai Muffafsil, Dist. Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. Bhushan Sharma S/o Vinod Sharma, R/o Vill. Tribhuan Tola, P.S.Muffasil, Dist.Khagariya
3. Sulen Sharma S/o Sanichar Sharma, R/o Vill. Suja Bhara, P.S.Begusarai Muffasil, Dist. Begusarai
4. Ajit Sharma S/o Ramjatan Sharma R/o Vill. Suja, P.S.Begusarai Muffasil, District Begusarai

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shubhesh Pandey, Advocate

For the Opposite Party No.1 : Mr. Parmanand Prasad, Addl.P.P.

For the Opposite Party Nos. 2 to 4 : Mr. Sandip Kumar Gautam, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 09-07-2015

When the matter has been taken up for consideration on merits, opposite party nos. 2 to 4 have entered appearance through their counsel by filing a duly executed vakalatnama on their behalf, which is taken on the record.

2. Heard learned counsel appearing on behalf of the petitioner, learned Addl.P.P. appearing for the State as also learned counsel appearing on behalf of opposite party nos. 2 to 4.

3. The petitioner has filed the present application under Section 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C.") questioning the validity and correctness of the order dated 03.08.2012 passed in Sessions Trial No. 640 of 2009 by learned Ad hoc Additional Sessions Judge 1st, Begusarai, whereby the petition filed on behalf of the petitioner under Section 319 Cr.P.C. for summoning the opposite party nos. 2 to 4 for facing trial in the

aforesaid sessions case has been rejected.

4. Learned counsel appearing on behalf of the petitioner submits that while considering the petition filed under Section 319 Cr.P.C., the learned trial court was required to find out only a prima facie case on the basis of the evidence of the witnesses recorded during trial or enquiry. At that stage, the learned trial court could not have looked into the materials collected during the course of investigation under Section 161 Cr.P.C. for the purposes of rejection of the petition filed under Section 319 Cr.P.C.. It is contended that on the face of it, the impugned order passed by the learned trial court is not sustainable in law.

5. Learned Addl.P.P. appearing on behalf of the State has fairly conceded that the matter requires reconsideration and a fresh decision by the learned trial court under the scheme and scope of Section 319 Cr.P.C.

6. Learned counsel appearing on behalf of the opposite party nos. 2 to 4 though has opposed the prayer made on behalf of the petitioner and has supported the impugned order passed by the learned trial court, but he has not been able to satisfy the court that at the stage of consideration of a petition filed under Section 319 Cr.P.C., the trial court is required to examine the case from the point of view of either conviction or acquittal of the accused persons, as has been done in the present case.

7. After having heard the parties and on examination of the materials available on the record, this Court is of the opinion that matter requires reconsideration and a fresh decision by the learned trial court. From the finding recorded in the impugned order, this Court finds that the learned trial court has also noticed the evidence of the witnesses examined during the course of trial, who have named

the opposite party nos. 2 to 4 as accused, but according to learned trial court, the evidence of the witnesses, so disclosed, were not sufficient for conviction of those persons, and, therefore, opposite party nos. 2 to 4 are not required to be summoned in the present case. I am afraid the view taken by the learned trial court is completely misconceived and not tenable in law. At the stage of consideration of a petition filed under Section 319 Cr.P.C., the trial court is required to find out only a prima facie case for summoning those persons who are not facing trial. If there is a prima facie case against such persons on the basis of the evidence of witnesses recorded during the course of trial or enquiry, then they are required to be summoned for facing trial. In the present case, from the tenor of the order passed by the learned trial court it appears that though a prima facie case is there against the opposite party nos. 2 to 4, but in the opinion of the trial court that evidence may not be sufficient for convicting them. Therefore, he has refused to exercise his powers under Section 319 Cr.P.C. In fact, the impugned order is contrary to the well settled principle of law as also contrary to the scheme and scope of Section 319 Cr.P.C.

8. For the reasons recorded above, the impugned order dated 03.08.2012 passed in Sessions Trial No. 640 of 2009 by learned Ad hoc Additional Sessions Judge Ist, Begusarai is hereby quashed and set aside and the matter is remitted back to the learned trial court for passing a fresh order strictly in accordance with law in the light of the observations made above by keeping in view the scheme and scope of Section 319 Cr.P.C.

9. In the result, the present application stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

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