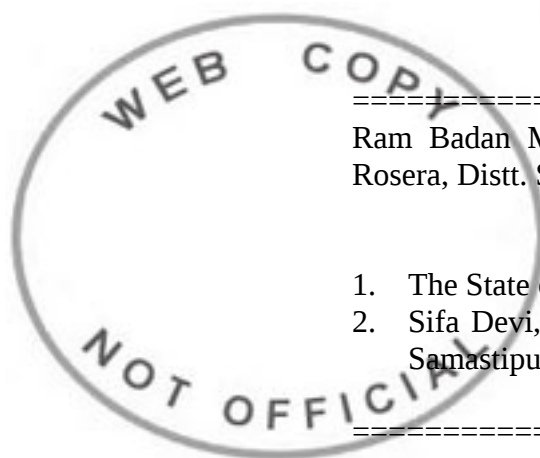




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40898 of 2008

Arising Out of Rosera P.S. Case No. 44 Year 2005 District- SAMASTIPUR

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Ram Badan Mahto, son of late Bilat Mahto, resident of village Haripur, P.S. Rosera, Distt. Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sifa Devi, wife of late Damodar Das, r/o village Dhhatha, P.S. Rosera, Distt. Samastipur.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Kamal Kishore Singh, Adv.

For the State : Mr. I.B. Pandey, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 31-08-2015

Heard learned counsel for the Petitioner and the State.

The Petitioner seeks quashing of the order dated 16.7.2008 by which the A.D. J. Rosera, in Sessions Trial No. 688 of 2005 arising out of Rosera P.S. Case no. 44 of 2005 summoned him to face Trial under Section 319 Cr. P.C.

The background fact is that on 5.5.2005 a First Information Report was instituted by the Opposite Party No. 2 in which she does not name the Petitioner. During investigation also none named the Petitioner. When trial commenced, three witnesses stated that the Petitioner was present at the spot on the date of occurrence. On this vague material, the Petitioner was sought to be summoned to face Trial under Section 319 Cr. P.C.

It has been submitted that none of the witnesses had taken the name of the Petitioner during investigation under Section 161 Cr. P.C. and hence it is a major contradiction which cannot be relied upon.

Considering that the powers under Section 319 Cr. P.C. should be exercised only under exceptional circumstances whereas the Petitioner has been summoned for unjustifiable reasons, the application is allowed and the Proceeding including the order dated 16.7.2008 passed by the A.D. J. Rosera, in Sessions Trial No. 688 of 2005 arising out of Rosera P.S. Case no. 44 of 2005, so far as the Petitioner is concerned, is hereby set aside.

(Anjana Prakash, J)

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