

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1760 of 2015

Arising Out of PS.Case No. -57 Year- 2010 Thana -ANDHRATHARI District- MADHUBANI

Barun Singh @ Anil Singh Son of Late Munna Singh, Resident of Village - Sizoul,
P.S. - Andhrathadi, District - Madhubani.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

Appearance :

For the Petitioner/s : Mr. Rabindra Kumar Singh, Adv.

For the Opposite Party/s : Mr. R. B. Roy Raman, ADV.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-09-2015

Heard learned counsel for the petitioner and learned counsel
for the State.

2. The present application under Section 482 of the Code of Criminal Procedure (for short ‘ the Code’) has been filed challenging the order dated 5.6.2013 passed by the learned Additional District and Sessions Judge, II, Madhubani issuing summons for appearance of the petitioner to face trial in Andhrathadi P. S. Case No. 57 of 2010, corresponding to Sessions Trial No. 589 of 2010.

3. On the basis of the statement of the informant, Andhrathadi P. S. Case No. 57 of 2010 was registered on 3.7.2010 for the offences under Sections 147, 148, 149, 307, 302 of the Indian Penal Code. According to the informant, the prosecution story is that



on 3rd July 2010 at about 7 a.m. in the morning his brother Badri Singh had gone to the field and was returning home and when he reached near the land of Lal Jha, Pune Singh, Barun Singh @ Anil Singh, Ashok Singh, Sanjiv Kumar Singh, Ajay Kumar Singh, Arun Singh and Maheswhar Singh all residents of village- Sizoul surrounded him and assaulted him with lathi, bhala and spade on which his brother raised hulla. The informant along with Prem Kumar Singh, Pawan Singh and other villagers rushed towards the place of occurrence. When he reached near the land of Lal Jha, they saw Barun Singh assaulting with bhala on the Kanpati “left ear region” and Arun Singh with the back portion of the spade. Thereafter, Ashok Singh and Sanjiv Singh assaulted with bhala and rest of them with lathi and when they reached at the spot all the accused persons fled away. Thereafter, they took the injured Badri Singh to the Sadar Hospital, Madhubani but in the way he died.

4. After investigation, the investigating officer of the case submitted charge-sheet on 29th September 2010 against the five accused persons and kept the investigation pending against the petitioner. After receipt of the charge-sheet of the case, learned ACJM, Jhanjharpur took cognizance of the offence against the accused persons, sent up for trial and committed the case to the court of Sessions. After commitment of the case, charges were framed and



the trial proceeded against five accused persons and as many as seven prosecution witnesses were examined from the side of prosecution on several dates fixed by the trial court. After examination of seven witnesses, during trial a petition was filed on behalf of the informant under the provision of Section 319 of the Code pursuant to which the impugned order dated 5.6.2013 was passed by the trial Court summoning the petitioner as an additional accused.

5. Learned counsel for the petitioner has submitted that the witnesses examined during trial have made inconsistent statement regarding involvement of the petitioner in the alleged offence. He has further submitted that the plea of alibi of the petitioner was examined by the Investigating Agency during investigation of the case and finding the petitioner to be innocent, he was not sent up for trial. He has also submitted that the summoning order against the petitioner has been passed on a very weak kind of evidence.

6. On the other hand, learned counsel for the State submits that all the witnesses examined during trial are consistent on the point that the petitioner had participated in the assault upon the deceased. He further submits that right from beginning the case of the prosecution is that the petitioner was one of the assailants of the deceased. He also submits that the Investigating Agency did not exonerate the petitioner and the investigation as against him was kept

pending while submitting charge-sheet against the five other accused persons.

7. Be that as it may, I find from the record that the trial court has minutely considered the evidences adduced by the witnesses examined during trial. It is found that the witnesses are consistent on the point of assault made by the petitioner on the person of the deceased. In that view of the matter, no illegality can be found in the order passed by the Court below summoning the petitioner as an additional accused. The provision of Section 319 of the Code empowers the Court to proceed against any person not shown or mentioned as an accused, it appears from the evidence that such a person has committed an offence for which he could be tried together with the main accused against whom the trial is being held. It authorizes the Court to issue a warrant of arrest or summons against the person if he is not attending the Court; and, if he is so attending, to detain the said person for the purpose of entering into or trial of offence which he appears to have committed. It is true that the power of summoning under Section 319 of the Code is not to be exercised in routine and mechanical manner but the same shall be exercised only if the Court feels the necessity of impleading the some person as accused.

8. In the present case, the trial Court has found from the

evidence that there is necessity of trying the petitioner with other accused facing the trial on the appreciation of evidence adduced during trial. I find no illegality in the impugned order passed by the Court below.

9. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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