

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45277 of 2012

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1. Sanju Kumar.
2. Vinay Kumar.
3. Mahendra Prasad, All sons of Sita Mahto.
All residents of Mansinghpur, P.S. Telhara, District Nalanda.
..... Petitioners

Versus

1. The State of Bihar.
2. Sumitra Devi, Wife of Shiv Nandan Prasad, Resident of Mohalla
Mansinghpur, P.S. Telhara, District Nalanda.
..... Opposite Parties

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Appearance :

For the Petitioners : Shri Sanjeev Kumar No.1, Advocate
Shri Shyamal Prakash, Advocate
For the State : Shri Ajay Kumar-2, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

2 14-05-2015

Heard.

It appears that by order passed on 16.11.2005 in Sessions Trial No. 539 of 2002 by the learned 4th Additional Sessions Judge, Hilsa (Nalanda), three accused persons had been summoned under Section 319 Cr.P.C. The charges had also been framed against them and all on a sudden the court could appreciate that the trial of newly added persons, i.e., accused who had been summoned under Section 319 Cr.P.C., in spite of being *de novo* should be carried out in a separate proceedings and, as such, what appears from the operative part of the order dated 13.09.2012, he directed the trial of Vinay Kumar, Sanjiv Kumar and Mahendra Kumar to be separated so that they could be tried separately from those who were already there for their trial before

passing of the order under Section 319 Cr.P.C.

This Court is concerned and worried as regards falling standards of interpretation of provision and knowledge of law and that too ignoring the judgments of the Supreme Court in *Shashikant Singh Vs. Tarkeshwar Singh & Anr.* reported in (2002) 5 SCC 738. The learned trial judge appears ignoring the language of Section 319 (4) Cr.P.C. which directs that where the court proceeds against any person under sub-section (1) then—(a) the proceedings in respect of such persons shall be commenced afresh and the witnesses reheard. It has consistently been held as in *Shashikant Singh* (supra) by interpreting the above part of sub-section (4) of Section 319 Cr.P.C. that the accused persons who had been summoned under Section 319(1) Cr.P.C. had to be tried together with the accused persons already facing trial and the evidence of witnesses has to be recorded as if it was a fresh trial ignoring the earlier evidence recorded by the court. The Supreme Court had gone on to say so much so that the witnesses could not even be recalled for cross-examination and the rehearing of the witnesses meant that they had to be examined afresh as if the trial had begun after framing of the charges.

The learned Sessions Judge who had passed the impugned order appears quite ignorant of the above observations of the Supreme Court and appears purposefully ignored the

judgment which was cited before him which is reported in 2006 (4) East Cr C 146 (Pat) [Radha Mohan Gond & Ors. Vs. State of Bihar & Anr.] directing that the trial in respect of such person has to be mandatorily commenced afresh *de novo*. The trial judge probably interpreted the judgment of the Supreme Court in this case which duty did not lie with him. It is required of him that he should have only implemented the directions of this Court contained in that judgment and he should have went on to try the case *de novo* against all the accused persons charging them together jointly. This is the fallacy in the order and that fallacy is hereby struck down. The trial of all the accused persons whose trial had already begun before passing the order under Section 319 Cr.P.C. and those who were summoned, has to be at one trial through a joint charge if the facts did not require accused persons also being charged severally. Let the trial court proceed with the trial as per the directions contained herein.

The petition stands disposed of in the aforesaid terms.

(Dharnidhar Jha, J.)

Sanjay/-

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