

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32232 of 2012

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Ajay Rai S/O Sri Sadhu Sharma Rai R/O Vill- Mehandaura, P.S- Azimabad
In The Distt- Bhojpur.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Shri Bhagwan Paswan S/O Late Sipahi Paswan R/O Vill- Mehandaura,
P.S- Azimabad In The Distt- Bhojpur.
3. Dasain Mushar, S/O Nathu Mushar, R/O Vill- Mehandaura, P.S-
Azimabad In The Distt- Bhojpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Pd.Singh, Sr.Advocate.
For the O.Ps.No.2 &3 : Mr. Anil Kumar, Advocate.
For the State : Mr.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

5 20-02-2015 Heard learned counsel for the petitioner, learned
counsel for the O.P. and learned counsel for the State.

By the present application under Section 482 of
Cr.P.C. the petitioner seeks to set aside the order dated 11.5.2012
passed by the learned Additional Sessions Judge, F.T.C. No.II,
Ara in Sessions Trial No.154/10/61/12 by which the petitioner's
prayer to summon O.P.Nos.2 and 3, namely, Shri Bhagwan
Paswan and Dasain Mushar to face trial has been rejected.

Learned counsel for the petitioner submits that the
said two opposite parties had been made accused in the F.I.R.
filed by the petitioner, informant in Azimabad P.S. Case No.42 of
2008. It is submitted on behalf of the petitioner that he had clearly



made the two opposite parties accused in his F.I.R. dated 18.10.2005 but the said two accused persons were not sent up for trial amounting to miscarriage of justice. It is submitted on behalf of the petitioner that during course of the trial one Satish Yadav and Rama Shankar Sharma were facing trial whereas Ram Kumar Sah and Gauri Shankar Sharma were facing trial in Sessions Trial No.61 of 2012 and both these cases have been taken up together for hearing.

Learned counsel for the petitioner submits that eleven witnesses have already been examined on behalf of the prosecution in which the petitioner, Ajay Rai (P.W.9) in his deposition has clearly named these two persons who actively participated in the occurrence which led to the commission of the offence, for which accused persons are facing trial.

Since, however, these two accused persons, namely, O.P.Nos.2 and 3 were not sent up for trial, the petitioner filed a petition on 27.4.2012 under Section 319 of Cr.P.C. praying to summon O.Ps. No.2 and 3 to face the trial. It is further submitted that since there was overwhelming materials in the trial with respect to the opposite parties, it was necessary that they be summoned and the case may be reopened so that justice can be met out in the present case.

A rejoinder was filed on 1.5.2012 by the opposite parties alleging therein that there was insufficient evidence available on record and the petition be not entertained as the same did not warrant reopening of the case at the fag end of the trial and that the said petition had been filed only with the intention of harassing the said opposite parties and delaying the trial.

The learned trial court after hearing the learned counsel for both the parties declined vide his order dated 11.5.2012 for summoning Sri Bhagwan Paswan and Dasai Musahar to face trial along with the other accused persons. Hence the present application invoking the inherent power of this Court.

After hearing learned counsel for the petitioner and learned counsel for the opposite parties and perusing Annexures-2 and 3 which are depositions of the petitioner who is Informant in the case and the brother of the informant Mritunjay Rai (P.W.11,) it appears that the said two witnesses had clearly stated before the court that O.P. Nos. 2 and 3 had actively participated in the occurrence which led to the murder of the brother of the petitioner. It is further apparent that the learned court below proceeded on the assumption that a few of the accused persons who were facing trial before the trial court in Sessions Trial No.154/10.had been acquitted. Thus it was not necessary to recall the present two



opposite parties. The court below further held that as in the earlier case as the witness had not disclosed the name of aforesaid accused persons along with others who were facing trial, they had been acquitted in the case. The learned trial court declined to summon the witnesses, the two accused persons, on the premise, that there is no corroboration in the alleged offence of the occurrence in the previous case and, therefore, in the fresh trial involving other accused, the present O.Ps. are not required to be summoned for facing trial at this stage.

Learned counsel for the petitioner has drawn my attention to the case of Rajan Rai vrs. State of Bihar reported in 2006(1) PLJR 418 in which the Hon'ble Apex Court has clearly held in paragraph 10 which is as follows:-

“10. A three-Judge Bench of this Court had occasion to consider the same very question in Karan Singh vs. State of M.P. [AIR 1965 SC 1037] in which there was in all 8 accused persons out of whom the accused Ram Hans absconded, as such trial of seven accused persons, including the accused Karan Singh, who was the appellant before this Court, proceeded and the trial court although acquitted the other six accused persons, convicted the seventh accused i.e. Karan Singh under Section 302 read with Section 149 IPC. Against his conviction, Karan Singh preferred an appeal before the High Court. During the pendency of his appeal, the accused Ram Hans was apprehended and put on trial and, upon its conclusion, the trial court recorded



the order of his acquittal, which attained finality, no appeal having been preferred against the same. Thereafter, when the appeal of the accused Karan Singh was taken up for hearing, it was submitted that in view of the judgment of acquittal rendered in the trial of the accused Ram Hans, the conviction of the accused Karan Singh under Section 302 read with Section 149 I.P.C. could not be sustained, more so when the other six accused persons, who were tried with Karan Singh, were acquitted by the trial court and the judgment of acquittal attained finality. Repelling the contention, the High Court after considering the evidence adduced came to the conclusion that murder was committed by Ram Hans in furtherance of the common intention of both himself and the accused Karan Singh and, accordingly, altered the conviction of Karan Singh from Section 304/149 to one under Sections 302/34 I.P.C. Against the said judgment, when an appeal by special leave was preferred before this Court, it was contended that in view of the verdict of acquittal of the accused Ram Hans, it was not permissible in law for the High Court to uphold the conviction of the accused Karan Singh. This Court, repelling the contention, held that the decision in each case had to turn on the evidence led in it. Case of the accused Ram Hans depended upon evidence led there while the case of the accused Karan Singh, who had appealed before this Court, had to be decided only on the basis of evidence led during the course of his trial and the evidence led in the case of Ram Hans and the decision there arrived at would be wholly irrelevant in considering the merits of the case of Karan Singh, who was the appellant before this Court. This Court observed at AIR p. 1038 thus:

“As the High Court pointed out,



that observation has no application to the present case as here the acquittal of Ram Hans was not in any proceeding to which the appellant was a party. Clearly, the decision in each case has to turn on the evidence led in it; Ram Hans's case depended on the evidence led there while the appellant's case had to be decided only on the evidence led in it. The evidence led in Ram Hans's case and the decision there arrived at on that evidence would be wholly irrelevant in considering the merits of the appellant's case."

In that case, after laying down the law, the Court further considered as to whether the High Court was justified in converting the conviction of the accused Karan Singh from Sections 302/149 to one under Section 302 read with Section 34 IPC after recording a finding that the murder was committed by Ram Hans in furtherance of the common intention of both himself and the accused Karan Singh. This Court was of the view that in spite of the fact that the accused Ram Hans was acquitted by the trial court and his acquittal attained finality, it was open to the High Court, as an appellate court, while considering the appeal of the accused Karan Singh, to consider the evidence recorded in the trial of Karan Singh only for a limited purpose to find out as to whether Karan Singh could have shared the common intention with the accused Ram Hans to commit the murder of the deceased, though the same could not have otherwise affected the acquittal of Ram Hans. ***In view of the foregoing discussion, we are clearly of the view that the judgment of acquittal rendered in the trial of the other four accused persons is wholly irrelevant in the appeal arising out of the trial of the appellant Rajan Rai as***

the said judgment was not admissible under the provisions of Sections 40 to 44 of the Evidence Act. Every case has to be decided on the evidence adduced therein.

Case of the four acquittal accused persons was decided on the basis of evidence led there while the case of the present appellant has to be decided only on the basis of evidence adduced during the course of his trial.”

Considering the aforementioned submissions and also the fact that the law is well settled in this regard that an application under Section 319 of Cr.P.C. can be entertained at any stage as each trial has to be decided on the basis of the evidence which is led in that particular trial and not in the other trial. I am of the view that the trial court has clearly erred in declining to summon these two accused persons and array them in the category of the accused in the trial which is in progress as he had to decide the application on the basis of evidence adduced in the trial before him. As such, order dated 11.5.2012 passed in Sessions Trial No.154/10/61/12 is set aside and quashed with direction to the trial court to proceed in accordance with law expeditiously so that the trial can be concluded at an early date.

(Anjana Mishra, J)

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