

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38540 of 2012

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1. Ashwani Kumar Verma @ Ashwani Verma W/O Late Ishwari Sharan
Resident Of Village- Harpur, Police Station- Marhaura, District- Siwan.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Asharfi Roy, son of late Likhan Roy, resident of Village Rampur
Khoram, Police Station Marhowra, District Saran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Shri Syed Asgher Najmi, Advocate

For the State of Bihar : Smt.AnsuiyaJaiswal, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

6 26-02-2015 Heard.

The grievance of the petitioner is against the order dated 26.7.2012 passed in Sessions Trial No. 656 of 2006 by the learned Ad hoc Sessions Judge-5, Saran at Chapra, by which order the petitioner was summoned after considering the evidence of the witnesses under Section 319 Cr.P.C. to face trial along with the accused who were already facing trial.

While passing the order, the trial court had considered the evidence of the witnesses and discussed those

evidences as may appear from paragraphs 2 and 3 of the impugned order. He had, thereafter, heard the parties and went on to pass the impugned order.

The learned counsel appearing for the petitioner was submitting that the witnesses, on perusal of their individual evidence, may not appear as eye witnesses as it was doubtful that they had been present at the scene of occurrence. After perusal of the evidence of the P.W.12 it may appear that he was telling a story different from what was told by other witnesses and the court had fell in error in assuming the present petitioner also to have committed the offence. It was, lastly, contended that paragraph 2 of the impugned order indicates that the court had heard counsel for the defence who had no locus standi to make submission on the point which was being considered by the court.

Section 319 Cr.P.C. reads as under :-

“319. Power to proceed against other persons appearing to be guilty of offence.- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may

be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

- (4) Where the Court proceeds against any person under sub-section (1) then-
- (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;
 - (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

As may appear from the plain reading of the provision, a person, who was not being tried with other accused persons during the course of an inquiry into or trial, if appears from perusal of the evidence, to have committed the offence may be summoned by the trial court to face the trial.

It is very clear from sub-section (4) of the provision that such person, who is likely to be summoned as an accused, may be summoned by a competent Court to face trial with the original accused deeming as if cognizance of offence had also been taken against him.

So far as the scope and ambit of the provision is concerned, it has been considered by the Supreme Court in the case of **Hardeep Singh Vs. State of Punjab reported in 2014 (2) PLJR 482 (SC)** which considered the provision and its application and has laid down many parameters of summoning

such a person for being tried as accused under Section 319 Cr.P.C. It has been held that such a person could be summoned as an additional accused, as is loosely called, for being tried with accused persons already facing trial merely by perusing the evidence in examination in Chief, even if there is no cross-examination of a witness. Not only that the principle on appreciation of evidence has not to be applied by marshalling the facts by the court.

In the present case the evidence of P.Ws. 2,3 and 4 do point out that the present petitioner was also an accused who had committed the offence by tying up the deceased to a tree and assaulting him also to cause his death. As regards the evidence of P.W. 12 the same may be taken up for consideration at the appropriate stage of the trial and not for passing an order under Section 319 Cr.P.C.

The petition appears of no merit and the same is dismissed.

The order of stay passed by the court on 20.9.2013 is vacated.

(Dharnidhar Jha, J)

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