

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43994 of 2012

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Hriday Pandey, S/O Late Gauri Shankar Pandey, Resident of Thakurbadi Road, Ward No. 12, P.S. And District Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Pramod Pandey, S/O Vikram Pandey, Resident Of Near Ganga Babu Chowk, Thakurbadi Road, Ward No. 12, P.S. & District Kishanganj.
3. Vinod Pandey, S/O Vikram Pandey, Resident Of Near Ganga Babu Chowk, Thakurbadi Road, Ward No. 12, P.S. & District Kishanganj.
4. Tarkeshwar Pandey, S/O Vikram Pandey, Resident Of Near Ganga Babu Chowk, Thakurbadi Road, Ward No. 12, P.S. & District Kishanganj.
5. Raju Pandey, S/O Vikram Pandey, Resident Of Near Ganga Babu Chowk, Thakurbadi Road, Ward No. 12, P.S. & District Kishanganj.
6. Vikram Pandey, S/O Late Ramagya Pandey, Resident Of Near Ganga Babu Chowk, Thakurbadi Road, Ward No. 12, P.S. & District Kishanganj.
7. Phoolbas Devi, W/O Vikram Pandey, Resident Of Near Ganga Babu Chowk, Thakurbadi Road, Ward No. 12, P.S. & District Kishanganj.
8. Srimati Devi, W/O Pramod Pandey, Resident Of Near Ganga Babu Chowk, Thakurbadi Road, Ward No. 12, P.S. & District Kishanganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Radha Mohan Singh

For the Opposite Party no.1 : Mr. Shailendra Kr. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 16-04-2015 Heard the parties.

The petitioner is aggrieved by the order dated 18.04.2012 passed in Session Trial No.1076 of 2011 by the learned Additional Sessions Judge, Kishanganj, whereby the petition filed on behalf of the accused opposite party nos.2 to 8 under Section 228 Cr.P.C. has been allowed and the case record has been remitted back to the court of learned C.J.M. to proceed with the trial in accordance with law.

Learned counsel appearing on behalf of the petitioner submits that, on the basis of the material available on record, the offence under Section 307 is made out against the accused

opposite party nos.2 to 8. Therefore, the learned Additional Sessions Judge ought not to have remitted the matter back to the court of learned C.J.M.

After having heard the parties, this Court finds that the petitioner has a statutory remedy in terms of Section 323 Cr.P.C., if evidence of witnesses is recorded and the learned Magistrate comes to a conclusion that the case ought to be tried by the court of Session. Admittedly, the evidence of the witnesses has not been recorded till date.

In above view of the matter, the present application is disposed of with a liberty to the petitioner to raise all the issues, which have been raised in the present application in terms of Section 323 Cr.P.C. once the evidence of material witnesses on behalf of the prosecution is recorded. If such a petition is filed on behalf of the petitioner, then the same shall be considered and decided by the learned Magistrate in accordance with law without being prejudiced or influenced by any finding recorded in the impugned order.

The application stands finally disposed of.

(Birendra Prasad Verma, J)

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