

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Miscellaneous No.22632 of 2016**

Arising Out of PS.Case No. -24 Year- 2016 Thana -SAMASTIPUR GRP CASE District-SAMASTIPUR

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1. Phool Babu Son of Md. Qayum Resident of Village- Mehsoul Gote, PS Sitamarhi, District Sitamarhi.
 2. Syed Ehteshamul Haq@Ehtemasul Haq Son of Syed Phool Babu Resident of Village- Mehsoul, PS Sitamarhi, District Sitamarhi.
 3. Md. Nazruddin Son of Md. Abdur Rahman Resident of Village- Mehsoul Gote, Ward no. 9, Sitamarhi, District Sitamarhi.
 4. Gulshan Khatoon wife of Quadir Rain Resident of Village- Mehsoul, PS Sitamarhi, District Sitamarhi.
 5. Md. Feroz son of md. Isman Resident of Village- Mehsoul, PS Sitamarhi, District Sitamarhi.
 6. Md. Aashif @Haasif Son of Dr. Md. Rafique Resident of Village- Mehsoul, PS Sitamarhi, District Sitamarhi.
 7. Md. Sahim@Md. Saim Alam Son of Usman Resident of Village- Mehsoul, , Ward no. 7, PS Sitamarhi, District Sitamarhi.
 8. Shifat@Md. Siffat@Md. sibgatullah Vaasti Son of late Habib Resident of Village- Mehsoul, PS Sitamarhi, District Sitamarhi.
 9. Zafar Mirza@Md. Zafar @Md. Zafar Mirza Son of Mirza Galib@Mirza Gal Resident of Village- Mehsoul, PS Sitamarhi, District Sitamarhi.
 10. Md. Afroz Son of Islam Resident of Village- Mehsoul, PS Sitamarhi, District Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Kanhaiya Lal Son of late Ravindra Kumar Singh Resident of Village- Chandrima, PS kashichak, District Nawada, Presently At C-24, Rail PS Sitamarhi.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Advocate

For the Opposite Party/s : Mr. Pushpa Sinha (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

3 05-09-2016 Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor.

2. Learned counsel for the petitioners has submitted that with regard to same occurrence two cases have been registered, one at the instance of one Mr. Aurangzeb Alam on the



basis of which Sitamarhi PS Case No. 197/2016 has been registered while another one has been registered as Rail Darbhanga (Sitamarhi) PS Case No. 24/2016 on the Fardbeyan of one Kanhaiya Lal, the alleged victim. Therefore, it is the submission on behalf of petitioners that proceeding with both the cases will be a sheer abuse of process of law. Simultaneously, petitioners will be put under unnecessary harassment by way of tackling both the trial independently, for the same cause. Therefore, allowing investigation in both the cases will cause irreparable loss to the petitioners and on account thereof, has prayed for quashing of Rail Darbhanga (Sitamarhi) PS Case No. 24/2016 pending before Railway Judicial Magistrate, Samastipur.

3. Learned APP opposed the prayer and submitted that, for the present, petitioners have got no leg to stand as the investigation is going on and during course thereof, the investigating officer would be under exclusive domain to deal with the situation having confronted including that of presence of two independent cases.

4. At the present moment, the prayer of the petitioners is not entertainable in the background of the fact that for the same and similar occurrence, in case, the petitioners have been prosecuted resulting their acquittal or conviction whichever

may be, then in that event, petitioner will have to say and further stand on the plank of double jeopardy in terms of Section 300 of the Cr.P.C. For the present, as the investigation is going on, as such, applicability of Section 300 Cr.P.C. is found non applicable. Apart from this, during course of investigation, so many options are found available before the I.O. whereupon, the prayer at the present moment, is found premature.

5. That being so, the instant petition is rejected.

(Aditya Kumar Trivedi, J)

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