

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4452 of 2013

Arising Out of PS.Case No. -5 Year- 1996 Thana -GAYGHAT District- MUZAFFARPUR

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Lekha Rai, son of late Amiri Rai, Resident of Village Susta Dakhinwari
(North) Tok, P.S. Gaighat, Dist. Muzaffarpur.

..... Petitioner/s

Versus

1. The State of Bihar.
2. Bisheshwar Rai, son of Prabhu Rai.
3. Aseshwar Rai, son of Prabhu Rai.
4. Chandeshwar Rai, son of Dayali Rai.
5. Shesh Narayan Rai, son of Ishri @ Ishwari Rai

All resident of Village Susta Dakhinwari (North) Tok, P.S. Gaighar,
Dist. Muzaffarpur.

..... Opposite Party/s

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Appearance :

For the Petitioner/s : Md. Anis Akhtar, Adv.
For the State : Mr. Jharkhandi Upadhyay (App)
For the O.P. : Mr. Nachiketa Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

11 22-02-2016 Heard learned counsel for the petitioner and counsel
for the State as also counsel for the private respondent.

In this case, the petitioner is challenging the order dated 21.11.2012 by which the application filed by the petitioner under Section 319 of the Code of Criminal Procedure has been dismissed basically on two grounds, namely, the witnesses are the family members and another inconsistency.

It appears that the case was initiated on the institution



of the First Information Report by the present petitioner which led to initiation of Sessions Trial No. 326 of 1997. Earlier the petitioner had filed an application under Section 319 of the Cr.P.C. which was rejected. The same was challenged in Cr. Misc. No. 8799 of 2011 and this Court by order dated 23.8.2012 quashed the order and remanded back the matter for fresh consideration. The court below has fallen in error in rejecting the application by passing an order without discussing the manner the court below was required to make enquiry under Section 319 of the Cr.P.C. This Court has already discussed in what manner the court was required to deal with the issue and the court below has not taken care to deal with the matter in terms of tenor and manner enquiry was supposed to be conducted and without proper discussion of materials that was brought during trial, the court dismissed this application. This Court is not satisfied with the manner the court has dealt with the issue pertaining to Section 319 of the Cr.P.C. and, accordingly, the order dated 21.11.2012 is set side and the matter is remanded back again before the court below to pass an order in proper consideration and yardstick delineated by Hon'ble Supreme Court in consideration of Section 319 of the Cr.P.C.

The Court below, 2nd Additional Sessions Judge, Muzaffarpur, is directed to dispose of the application within a

period of two months from the date of receipt of this order.

In the result, this application is allowed.

(Shivaji Pandey, J)

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