

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4288 of 2016

Arising Out of PS.Case No. -122 Year- 2005 Thana -AMARPUR District- BANKA

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1. Bhuwaneshwar Singh son of Late Boudh Narayan Singh
2. Maheshwari Prasad Singh @ Maheshwari Singh, son of Sri Bhuwaneshwari Singh
3. Manoj Kumar @ Manoj Kumar Singh @ Manoj Singh, son of Sri Bhuwaneshwari Singh
4. Pankaj Kumar Singh @ Pankaj Singh @ Pintu @ Pankaj @ Pintu Singh son of Sri Bhuwaneshwari Singh
All residents of village Angra Jore, Police Station - Amarpur (Phullidumar) in the district of Banka

.... Petitioners

Versus

1. The State of Bihar
2. Sri Ram Raj Singh son of Late Shayam Singh resident of village Kaduya, Police Station Amarpur (Phullidumar), in the district of Banka

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Akhileshwar Pd. Singh, Sr. Advocate
Mrs. Anita Kumar Singh, Advocate
For the State : APP

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 01-12-2016

Heard learned senior counsel for the petitioners and
learned counsel for the State.

2. The challenge in the present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") is to an order passed by the learned Additional Sessions Judge III, Banka on 1st of September, 2015 in Sessions Trial No. 30 of 2011 summoning the present petitioners for an offence under Section 302 read with Section 34 of the Indian Penal Code in exercise of



power conferred upon him under Section 319 of the Cr.P.C.

3. Learned senior counsel for the petitioners raised two-fold arguments. It is firstly agued that the acceptance of the final report vide order dated 27th of July, 2009 leads to discharge of the petitioners and, therefore, they cannot be summoned in a proceeding under Section 319 of the Cr.P.C. Secondly, it is argued that while considering the application under Section 319 of the Cr.P.C., the court was duty bound to examine the statements of the witnesses recorded under Section 161 of the Cr.P.C. to find out as to whether the statements of the witnesses are discrepant with the statements given in court.

4. We find the present petition as untenable. A perusal of the order dated 27th of July, 2009 shows that the court has taken cognizance in terms of the report submitted against accused Jai Kumar Singh, Dablu Singh and Budhan Singh. Such cognizance was taken in view of the report submitted by the Investigating Officer. Taking cognizance of the offence against some of the accused does not amount to discharge of other accused and, therefore, there cannot be any implied discharge of the petitioners when there is no reference to the petitioners in the said order passed by the learned trial court on 27th of July, 2009.

5. The question as to whether the statements of the



witnesses are discrepant than what was stated in the proceeding under Section 161 of the Cr.P.C., can be decided only when the witnesses are examined on oath in Court and they are confronted with the previous statements recorded under Section 161 of the Cr.P.C. While summoning an accused under Section 319 of the Cr.P.C., the court has to examine the statements of the witnesses made before it on oath. On the basis of such statements, the petitioners have been summoned to stand trial.

6. We do not find any error in the order passed by the learned trial court which may warrant interference in the present petition. The same is dismissed.

(Hemant Gupta, ACJ)

B.T/-

(Vikash Jain, J)

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	06.12.2016
Transmission Date	N.A.

