

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5917 of 2016

Arising Out of PS.Case No. -241 Year- 2001 Thana -SAMASTIPUR MUFFASIL District-
SAMASTIPUR

Manish Kumar, Son of Late Shyam Nandan Prasad, Resident of Village -
Balbhadrapur, P.S. - Muffasil, District - Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Sikandar Kumar Rai, Son of Kusheshwar Rai, Resident of Village -
Balbhadrapur, P.S. - Muffasil, District - Samastipur.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate
Mr. Alok Kumar @ Alok Kr. Shahi, Advocate
For the State : Mr. Binod Kumar No. 3, APP
For the Informant : Mr. Ashok Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-07-2016

By way of the present application preferred under
Section 482 of the Code of Criminal Procedure (For short 'CrPC'),
the petitioner seeks quashing of the order dated 05.10.2015 passed
by the learned Additional District & Sessions Judge-2nd, Samastipur
in Sessions Trial No. 804 of 2006 arising out of Town (Muffasil)
P.S. Case No. 241 of 2001 by which he has allowed the application
dated 25.03.2013 filed under Section 319 of the CrPC by the

prosecution and summoned the petitioner and Raj Kumar Rai to face trial.

2. Learned counsel for the petitioner has submitted that the informant of the case is an eye-witness to the occurrence. On his fardbeyan, a case under Sections 395 and 397 of the Indian Penal Code (For short 'IPC') against Raj Kumar Rai @ Raju Rai and 16-17 unknown criminals was registered. The petitioner is resident of the same village where the informant resides. He was the Mukhiya of the village at that point of time and had some disputes with the informant's family.

3. It is further submitted by the learned counsel for the petitioner that it is surprising that though known to the informant, the petitioner was not made a named accused in the FIR. Even after investigation, the police found the allegations to be false as against the petitioner and, hence, he was not sent up for trial. The police report submitted by the investigating agency was accepted by the learned Magistrate. Since the offence alleged was triable by the Court of Sessions, the jurisdictional Magistrate, before whom the police report was submitted, committed the case of the accused persons who were sent up for trial to the Court of Sessions. Even the Sessions Court did not take any cognizance of the offence against the petitioner in exercise of power under Section

193 of the CrPC. However, after the charges were framed and three witnesses were examined, the court below has erroneously summoned the petitioner to face trial.

4. He has submitted that the summoning order under Section 319 of the CrPC is bad in the eye of law, as the trial Judge has considered the materials collected during investigation. According to him, summoning of the petitioner on the basis of statement recorded during investigation under Section 161(3) of the CrPC is impermissible in law for exercising power under Section 319 of the CrPC.

5. *Per contra*, learned counsel for the informant has submitted that the witnesses examined during investigation including the injured father of the informant had named the petitioner, as the person who had shot at the father of the informant causing injury in his chest, but the police submitted a collusive report and erroneously, the Magistrate also accepted the police report. He has submitted that it is true that the statement recorded under Section 161(3) of the CrPC are not to be considered by the trial court while summoning an accused under Section 319 of the CrPC, but in the present case, it would be evident from perusal of the record that the trial court had summoned the petitioner on the basis of material collected during trial as all the three witnesses who

were examined on behalf of the prosecution have categorically stated that it was the petitioner who had shot at the father of the informant while committing dacoity causing bullet injury in his chest, as a result of which, he was taken to the hospital for treatment.

6. I have heard respective counsel for the parties and perused the materials available on record.

7. I find substance in the arguments advanced on behalf of the learned counsel for the informant. The three witnesses examined during trial, namely, Dharam Lal Rai @ Dhnji Rai, Maharana Pratap Rai and Sikandar Kumar, are consistent on the point that at the time of dacoity, it was the petitioner who had shot at the father of the informant causing bullet injury in his chest.

8. In view of such evidence, if the trial court has summoned the petitioner as an additional accused, it cannot be said that the summoning order is bad in law.

9. In **Hardeep Singh and others vs. State of Punjab and others [(2014) 3 SCC 92]**, the constitution Bench of the Supreme Court has held that the degree of satisfaction for summoning a person under Section 319 of the CrPC has to be different from the degree of satisfaction for taking cognizance of the offence and summoning an accused. It has held that for summoning

a person under Section 319 of the CrPC, the degree of satisfaction would be the same as for framing of charge. Even from that yardstick, if I consider the evidence on record, it cannot be said that the material available before the court during trial were not sufficient for framing of charge against the petitioner.

10. Regard being had to the discussions made hereinabove, I am not inclined to interfere with the order passed by the court below.

11. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	
CAV DATE	
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