

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46907 of 2015

Arising Out of PS.Case No. -259 Year- 2002 Thana -BAHERA District- DARBHANGA

Baidyanath Mallik @ Baijnath Mallik son of Late Mahavir Mallik, resident of village - Mahinampatti, Bahera Bazar, P.O. + P.S. - Bahera, District - Darbhanga

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md. Shahnawaz Ali, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-02-2016

The petitioner is informant of Bahera P.S. Case No.259 of 2002 registered under sections 447, 341, 323, 307 and 379 read with 34 of the Indian Penal Code (for short "IPC"). The said case was registered against three accused persons named in the FIR. The police investigated the case and submitted their report vide charge-sheet no.24 of 2003 dated 28.2.2003 under sections 447, 341, 323 and 307/34 of the IPC against the accused persons named. Since the case under section 379 of the IPC was not found to be true, the charge-sheet was not submitted under the aforesaid section. After taking cognizance of the offences, the learned Magistrate committed the case to the court of sessions.

2. On 19.3.2004, the Sessions court framed charges against



the accused persons under sections 447, 341, 323, and 307 of the IPC to which they pleaded not guilty. Accordingly, trial commenced. In course of trial, the prosecution took 12 years to examine its witnesses. When the case was closed and arguments were advanced on behalf of the parties, an application was filed by the petitioner before the trial Judge that charges under sections 149, 379 and 34 be also added against the accused persons. After hearing the parties, the trial court rejected the application filed on behalf of the petitioner vide order dated 2.9.2015. The said order dated 2.9.2015 is under challenge before this Court in the present application filed under section 482 of the Code of Criminal Procedure (for short "Cr.P.C.").

3. Learned counsel for the petitioner has contended that though there is evidence on record to frame charges under sections 149, 34 and 379 of the IPC against the accused persons, the trial court has rejected the application of the petitioner mechanically and none addition of those charges would enure to the benefit of the accused persons facing trial.

4. On the other hand, learned counsel for the State has contended that the belated application filed by the petitioner is nothing but an abuse of the process of the court and it has been filed just to harass the accused persons and delay the completion of the trial.

5. I have heard respective counsel for the parties and perused the records.

6. It would be evident from perusal of the impugned order that finding no material for framing of charge for the offences under section 379 of the IPC, the trial court has rejected the application of the petitioner. Section 34 of the IPC acknowledges the principle of vicarious liability. It is a rule of evidence and does not create a substantive offence whereas section 149 of the IPC has its foundation on constructive liability. A perusal of the impugned order would indicate that there is no evidence that any theft was committed or the offence was committed with common intention or common object. The evidence adduced before the trial court have also not been brought on record in the present application. Moreover, raising such an issue at such a belated stage when the arguments are being advanced clearly gives an impression that the informant intends to delay the trial for an indefinite period.

7. In view of the discussions made, hereinabove, I find no merit in the present application. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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