

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.197 of 2017

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1. Sri Ram Chaudhary, S/o Late Musnhi Chaudhary,
2. Ramlal Chaudhary, S/o Late Jagannath Chaudhary,
3. Yogesh Chaudhary, S/o Sri Om Prakash Chaudhary,
4. Surender Chaudhary, S/o Late Yogendra Chaudhary,
5. Krishna Kant Singh, S/o Sri Kali Charan Singh,
6. Bharat Chaudhary, S/o Late Ram Adalat Chaudhary,
7. Santosh Chaudhary, S/o Late Fulchand Chaudhary, All R/o Village-
Haribanshpur Tola, PS- Dinara, District- Rohtas at Sasaram.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sri Bhagwan Singh, S/o Late Ram Prasad Chaudhary, R/o Village-
Haribanshpur Tola, PS- Dinara, District- Rohtas at Sasaram.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nagendra Prasad
For the Respondent/s : Mr. Sri Tapeswar Sharma

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 13-04-2017 Heard learned counsel for the parties.

The petitioners are aggrieved by an order, dated 03.01.2017, passed in Sessions Trial No. 422 of 2011 arising out of Rohtas Dinara P. S. Case No. 55 of 2011 passed by learned Additional Sessions Judge- VIII, Rohtas at Sasaram, whereby he has dismissed an application filed by the petitioners under Section 217 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the **Code**) for recall of witnesses on alteration of charge.

From the records, it appears that the petitioners are facing trial on the charge of the offence punishable under



Sections 147, 148, 149, 452, 323, 342, 302 of the Indian Penal Code and Section 27 of the Arms Act in the above noted trial.

It is the case of the petitioners that after closure of evidence, when the argument was yet to begin, the prosecution filed an application seeking alteration in the charge though only in relation to mentioning of place of occurrence. The said application was filed on 08.12.2016, which has been allowed by the Court below. After the said prayer made on behalf of the State was allowed on 08.12.2016 itself, the petitioners filed an application under Section 217 of the Code for recall of the prosecution witnesses for their cross-examination, specially on the point of place of occurrence. The said application, dated 21.12.2016 has been dismissed by the impugned order, dated 03.01.2017.

Learned counsel appearing on behalf of the petitioners has submitted that change of place of occurrence as mentioned in the charge is a major alteration and if the petitioners are not allowed to cross-examine the prosecution witnesses on the point of place of occurrence, it will gravely prejudice their case, and which will amount to miscarriage of justice. It has been argued that it is the mandate of the legislature that once a charge is altered, the prosecution and



defence both should have the opportunity to recall the witnesses.

Learned Additional Public Prosecutor, appearing on behalf of the State though did not dispute the position of law but has submitted that what has been done by the Court below may not be treated as alteration of charge, rather it was a clerical mistake which has been rectified by the Court below by order, dated 08.12.2016.

I find substance in the submission made on behalf of the petitioner. I find that the place of occurrence as mentioned in the original charge was described as 'Mohan Bigha'. The State in its application, dated 08.12.2016, mentioned that it was wrongly typed in place of "Nahar Bridge". It cannot be treated to be a mere typographical error. Whether "Mohan Bigha" and "Nahar Bridge" are the names of same place or where the occurrence, according to the prosecution, had taken place will all depend upon the evidence, which could be adduced at the trial. In my view, Section 217 of the Code shall apply in the present case with full force, which reads thus:-

"217.-Recall of witnesses when charge altered

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed-

1. to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be,



desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

2. also to call any further witness whom the Court may think to be material.”

I further notice from the impugned order that anxiety of the disposal of the trial in the light of an order of this Court, dated 23.11.2016, passed in Cr. Misc. No. 49179 of 2016 weighed the mind of the Court below more than mandatory statutory requirement under Section 217 of the Code. Section 217 of the Code is significant provision and an important stage of trial in case of alteration of charge, which is mandatory in nature. Any breach of the said provision will make an order or trial vulnerable. Accordingly, the impugned order, dated 03.01.2017, is set aside.

This application is allowed.

(Chakradhari Sharan Singh, J)

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