

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 49159 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- SIWAN

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The State of Bihar through D.M. Siwan

.... Petitioner

Versus

1. Md. Shahabuddin, Son of Md. Hasibullah, Resident of Village Pratappur P.S. Hussainganj, District - Siwan, at present convict prisoner at Siwan District Jail
2. Sri Manoj Kumar Singh No. 1, Advocate, Civil Court Siwan

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Shyameshwar Daya, Advocate

For the Opposite Parties : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 16-11-2017

Heard learned counsel for the petitioner.

Opposite party no. 1 Md. Shahabuddin is accused in connection with Trial No. 23 of 2013 pending in the court of learned Judicial Magistrate 1st Class-cum-Special Magistrate, Jail Court Siwan. The opposite party no. 1 is already in jail. Notice of this case has already been served on opposite party no. 2.

By the impugned order dated 19.09.2013, the learned trial Judge has allowed the prayer of opposite party no. 1 to engage Counsel of his choice to defend his case at the cost of the State at par with the fee granted to the State Counsel.

The State has challenged the aforesaid order on the ground that the opposite party no. 1 has sufficient means to engage a Counsel. The State is ready to produce the materials to support his



income to engage lawyers of his choice to defend his case at his own cost.

Moreover, the learned trial court has not recorded any finding that the petitioner has no sufficient means to engage a Pleader as required by Section 304(1) Cr.P.C. which reads as follows:-

“Section 304(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.”

A bare perusal of the aforesaid provision, the trial Court is required to record finding that the accused has no sufficient means to engage a pleader. Unless the finding aforesaid is recorded and the finding must be supported by the material on the record, the Court cannot exercise jurisdiction under Section 304 Cr.P.C. in favour of the petitioner.

Hence, the impugned order is hereby set aside and the matter is remitted back to the court below to pass order, accordingly.

(Birendra Kumar, J)

Kundan/-

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