

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.984 of 2014

- =====
1. Kangress Yadav Son of Late Bindeshwar Yadav @ Bino Yadav Resident of Village - Keshabai, Police Station - Barauni Refinery, District - Begusarai
 2. Mamta Devi wife of Raja Ram Yadav Resident of village - Shushil Nagar, Police Station - Muffasil, Begusarai, District - Begusarai

.... Petitioners

Versus

1. The State of Bihar
2. Sudhir Yadav, son of Dwarik Yadav, resident of village Sushilnagar, Police Station Muffasil (Sindhaul), District Begusarai

....

Respondent

=====

Appearance :

For the Petitioner/s : Mr. Kumar Ranjit Ranjan

For the Respondent/s : Mr. Nityanand (App)

=====

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER**

3 16-02-2017 Heard learned Counsel for the petitioners and learned Additional Public Prosecutor representing the State.

The impugned order, dated 01.08.2014, passed by learned *Ad hoc* Additional Sessions Judge II, Begusarai, in Sessions Trial No. 203 of 2009, is under challenge in the present criminal revision application, filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code").

By the said order, learned Court below has



allowed an application, under Section 319 of the Code, said to have been filed on behalf of the prosecution, though it is not evident from the impugned order as to whether the application has been filed by the informant or the State.

Learned Counsel appearing on behalf of the petitioners has submitted that the impugned order does not discuss, at all, as to the circumstance in which the petitioners were required to be summoned under Section 319 of the Code.

I have perused the impugned order. I find substance in the submission made on behalf of the petitioners that there is absolutely no discussion as to what evidence was adduced at the stage of trial, which required learned Trial Court to summon these petitioners under Section 319 of the Code.

The exercise of power under Section 319 of the Code is to be done in exceptional circumstances, where, on the basis of the evidence at the trial and other materials, the Court is, *prima facie*, of the view that the said persons have also committed the offence.

The order, dated 01.08.2014, is not, at all, sustainable and is accordingly set aside.

This will, however, not preclude the learned Court below to pass an order afresh in accordance with law



under Section 319 of the Code, but with the observations,
as above.

This application is allowed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

U	✓	T	✓
---	---	---	---

