

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.316 of 2017

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1. Bairister Prasad @ Balishter Yadav, S/o Late Harilal Yadav,
2. Baliram Yadav, S/o Late Harilal Yadav.
3. Krishna Yadav, S/o Late Hari Lal Yadav.
4. Kalpnath Yadav, S/o Garjan Yadav, All resident of Tola Sipaya, P.S. Bishambharpur, Dist.- Gopalganj.
5. Krishna Tiwari, S/o Late Satya Narain Tiwari, R/o Vill. Binod Matihaniya, P.S. Bishambharpur, Dist. Gopalganj.
6. Dhuri Chaudhary, S/o Late Sitaram Yadav, R/o Vill. Isharpatti, P.S. Bishambharpur, Dist.- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh
With Mr. Ajay Kumar Sharma
For the Respondent/s : Mr. Sri Ganesh Prasad Singh
For the Opposite party : Mr. S.R.P. Sinha, Senior Advocate

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

5 21.07.2017 Heard learned counsel for the petitioners and the learned Senior Counsel appearing on behalf of the informant of Bishambharpur P. S. Case No. 69 of 2014.

2. In the present criminal revision application, the petitioners are aggrieved by order, dated 02.03.2017 passed by the learned Vith Additional Sessions Judge, Gopalganj in Sessions Trial No. 155 of 2015 arising out of said Bishambharpur P. S. Case No. 69 of 2014, registered for the offences punishable under Sections 302/34, 120B, 504 of the Indian Penal Code and Section 27 of the Arms Act, whereby



the petitioners have been summoned to stand trial under Section 319 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code).

3. These petitioners were named accused in the First Information Report. The Police upon completion of investigation submitted report charge-sheeting other accused persons but not these petitioners. These petitioners were, thus, not sent up for trial.

4. At the trial, on the basis of evidence of the prosecution witnesses, the informant filed an application under Section 319 of the Code before the Court below for summoning these petitioners to stand trial as according to them, the evidence suggest that these petitioners had committed the offence, for which they should be tried together with the accused. The application under Section 319 of the Code has been allowed by the impugned order, dated 02.03.2017.

5. Mr. Bindyachal Singh, learned Counsel appearing on behalf of the petitioners, assailing the impugned order, has submitted that while considering an application under Section 319 of the Code or exercising jurisdiction under the said provision, the trial Court is not only required to see the evidence adduced at the trial since chance of false implication by the prosecution at that stage cannot be ruled out. He has



further submitted that the evidence adduced at the trial should be considered along with other materials, namely, the accusation in the First Information Report, materials collected in course of investigation and whether the prosecution is attempting to improve the case at the stage of trial in order to implicate a person, against him there is other material to proceed against him. He has submitted that summoning of person who is not an accused under Section 319 of the Code is a very serious matter where a person who is not an accused put on trial on the basis of evidence of witnesses at the trial and, therefore, such power must be exercised with utmost care and caution.

6. He has also submitted, referring to the contents of the First Information Report and the evidence of the witnesses at the trial, that there are numerous contradictions and apparently the witnesses have attempted to improve the case and implicate these petitioners falsely. He has placed reliance on various Supreme Court's decision including ***Hardeep Singh V. State of Punjab*** reported in **(2014) 3 SCC 92** and other decision in case of ***Krishnappa Vs. State of Karnataka***, reported in **(2004) 7 SCC 792** and other judgments which have been considered by this Court in the decision dated 22.01.2017 in ***Criminal Revision No. 648 of 2014 (Karu Pandit and ors. Vs. State of Bihar and***



others). He has also relied on a decision of this Court in case of Awadhesh Yadav Vs. State of Bihar reported in 2012(4) PLJR 967. Reliance has also been placed on another decision of this Court dated 28.03.2017 passed in Criminal Revision No. 340 of 2015 (Alok Kumar Singh and ors Vs. State of Bihar).

7. Learned Senior Counsel appearing on behalf of the information, on the other hand, has submitted that on the basis of the materials, which are there on record, it cannot be said that these petitioners are not likely to be convicted. According to him, if the Court has exercised discretion on the basis of the materials on record to proceed under Section 319 of the Code, this Court may not interfere in revisional jurisdiction since the impugned order cannot be said to be suffering from any perversity. He has submitted that the Court below, on analyzing the evidence of the prosecution witnesses has framed an opinion that these petitioners have committed offence for which they could be tried together. Any order by this Court setting aside the order passed by the court below shall amount to recording their acquittal at this stage.

8. On perusal of the evidence of the prosecution witnesses, I am of the view that it cannot be said that exercise of power under Section 319 of the Code by the Court



below by summoning the witnesses is absolutely unjustified, erroneous or otherwise illegal, requiring this Court's interference. The petitioners were named in the First Information Report. The Police after investigation though decided not to proceed against them, the evidence of the prosecution witnesses suggested their involvement in the case though prima facie, as recorded by the Court below in the impugned order.

9. The impugned order does not need interference.

10. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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