

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.2213 of 2015

Arising Out of PS.Case No. -13 Year- 1995 Thana -AHIAPUR District- MUZAFFARPUR

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1. Ravindra Singh Son of Briksha Singh
2. Manoj Kumar Son of Ram Deo Bhagat
3. Md. Afroj Alam Son of Late Jalil Ansari
4. Krishna Kumar Son of Late Jiyalal Rai
5. Aftab Alam @ Md. Aftab Alam Son of Late Jalil Ansari
6. Manoj Thakur Son of Suraj Thakur
7. Jawahar Rai @ Jawahar Lal Rai Son of Late Fudeni Rai
8. Chunnu Thakur Son of Jai Narain Thakur
9. Kishori Sahani Son of Late Deepa Sahani
10. Nagendra Singh Son of Late Ram Briksha Singh
11. Kanhai Rai Son of Late Siyalal Rai
12. Mahesh Sahani Son of Kishori Sahani
13. Lalan Rai Son of Late Manji Lal Rai all resident of Village - Mithansarai, Madhopur P.S- Ahiyapur, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Rajeshwar Prasad Kushwaha Son of Bisuni Prasad Kushwaha all resident of Village - Mithansarai, Madhopur P.S- Ahiyapur, District - Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bharat Lal, Adv.
Mr. Ram Naresh Singh, Adv.

For the Opposite Party/s : Mr. Ram Anurag Singh (App)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 02-03-2017 Heard Mr. Bharat Lal learned counsel for the petitioners and learned A.P.P.

2. The petitioner by filing this petition under Section 482 of the Code of Criminal Procedure hereinafter referred to as the 'Code' for quashing the order dated 16.12.2014 passed in Sessions Trial No. 369/96 whereby learned Additional Sessions



Judge IIIrd, Muzaffarpur dismissed the petition of the petitioners/accused to recall P.Ws. 6, 7, 8, 10 and 11 after amendment of charge, on the ground that no prejudice is caused to the accused in inserting the name of Laxman Prasad Kushwaha in the form of charge.

The brief facts which are relevant for the disposal of this Cr. Misc. are that the informant made his fardbeyan on 19.01.1995 alleging therein that the accused persons kidnapped his brother Laxman Prasad Kushwaha and his brother-in-law Ram Sevak Prasad Kushwaha.

The informant suspects that the accused persons might have killed Laxman Prasad Kushwaha and Ram Sevak Prasad Kushwaha. On such statement, Ahiyapur P.S. Case No. 13/95 was registered on 19.01.1995. During the course of investigation, it has come that Ram Sevak Prasad Kushwaha remained traceless, but the dead-body of Laxman Prasad Kushwaha was found. The police after investigation found the case true under Sections 364, 302, 201 and 34 of the Indian Penal Code against the accused persons. The accused persons were put on trial and charges under Sections 364/34, 302/34 and 201 were framed against the accused persons on 04.07.2001, but due to inadvertence learned Additional Sessions Judge IIIrd, Muzaffarpur



while he was framing charge under Sections 364/34 of the Indian Penal Code, name of Laxman Prasad Kushwaha was not mentioned in the column of kidnapped persons along with Ram Sevak Prasad Kushwaha. The prosecution filed a petition for inserting the name of Laxman Prasad Kushwaha in the charge-sheet. Learned Additional Sessions Judge IIIrd, Muzaffarpur rejected the petition of the prosecution against which the prosecution moved before this court in Cr. Misc. 4960/2013 and this court vide order dated 15.07.2013 allowed the petition of the prosecution and directed the court in session of the case to insert the name of Laxman Prasad Kushwaha in the form of charge for the offences under Sections 364 and 34 of the Indian Penal Code. The accused persons thereafter, filed a petition for recalling prosecution witness 6, 7, 8, 10 and 11 for further cross-examination. Learned Additional Sessions Judge IIIrd, Muzaffarpur vide order dated 16.12.2014 passed in Sessions Trial No. 369/96 dismissed the petition of the prosecution on the ground that the defense has thoroughly and exhaustively cross-examined all the prosecution witnesses even for the kidnapping of Laxman Prasad Kushwaha and in no way the defense is prejudiced by inserting the name of Laxman Prasad Kushwaha, which was left out due to typographical error in the form of charge.



Mr. Bharat Lal learned counsel for the petitioner assails the order aforesaid on the ground that the name of Laxman Prasad Kushwaha was inserted later on in the form of charge, as the person kidnapped along with Ram Sevak Prasad Kushwaha, but the accused persons were not tried for kidnapping of Laxman Prasad Kushwaha, therefore, after insertion of the name of Laxman Prasad Kushwaha the accused persons should be allowed to cross-examine the prosecution witnesses and they were not allowed to cross-examine.

From the facts it is evident that the informant alleged that two persons namely, Ram Sevak Prasad Kushwaha and Laxman Prasad Kushwaha were kidnapped. During the course of investigation, the dead-body of Laxman Prasad Kushwaha was recovered. The police after investigation found the case true for kidnapping of Laxman Prasad Kushwaha and Ram Sevak Prasad Kushwaha and also found case true for killing of Laxman Prasad Kushwaha. Accordingly, submitted final form under Sections 364, 302, 201 and 34 of the Indian Penal Code against all the accused persons. At the time of framing of charge, the accused persons were charged under Section 364 read with section 34 of the Indian Penal Code for kidnapping of Ram Sevak Prasad Kushwaha and they were also charged for killing of Laxman Prasad Kushwaha in



furtherance to their common intention at the same date, time and place. On the face of it appears that the accused persons were very much aware that they were put on trial for the kidnapping of Ram Sevak Prasad Kushwaha as well as Laxman Prasad Kushwaha, but due to sheer typographical error and inadvertence in the form of charge the name of Laxman Prasad Kushwaha did not find place and by order of this court, the name of Laxman Prasad Kushwaha was inserted in the form of charge framed against the accused under Sections 364 and 34 of the Indian Penal Code.

Section 216 of the Code provides alteration of charge during trial which reads as follows:-

“Section – 216 – Court may alter charge –

(1.) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2.) Every such alteration or addition shall be read and explained to the accused.

(3.) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4.) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as



aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5.) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

From perusal of the aforesaid provisions as contained in Sub-section 3 and facts on record, it appears that if any substantive alteration in charge is made or any facts material to the defense case has not mentioned and for that no charge was framed in that event, the court shall provide ample opportunity to the prosecution to cross-examine the witnesses, but from the facts of the present case, it appears that the accused persons were not misled on any ground due to non-inclusion of the name of Laxman Prasad Kushwaha in the form of charge because the accused persons were fully aware that they were put on trial for kidnapping of Laxman Prasad Kushwaha and Ram Sevak Prasad Kushwaha and for killing of Laxman Prasad Kushwaha. The accused person also examined the prosecution on all points including for killing of Laxman Prasad Kushwaha. The order of the learned Additional Sessions Judge, Muzaffarpur has stated that the accused persons



cross-examined all the witnesses on the point of kidnapping of Laxman Prasad Kushwaha also. The accused have already been charged under Section 302 read with Section 34 of the Indian Penal Code for the killing of Laxman Prasad Kushwaha. The learned counsel of the petitioner could not be able to show that how any prejudice would cause.

Having considered the facts, I do not find any merit and thus, the petition is dismissed.

(Prabhat Kumar Jha, J.)

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