

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.275 of 2017

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

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1. Rajendra Paswan S/o Late Devi Das, Resident of Village- Haspura, P.S.- Belchi,
District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Nirmala Kumari Wife of Damodar Paswan
3. Puja Kumari Daughter of Damodar Paswan Both Resident of Village- Kali
Asthan, Bichali Malahi, P.S. Barh, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Dilip Kumar Sinha
For the State : Mr. R. B. Roy 'Raman'

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

JUDGMENT AND ORDER
ORAL

Date: 22-06-2017

Heard learned Counsel for the petitioner and
learned Additional Public Prosecutor representing the State.

2. The petitioner is aggrieved by an order, dated
24.01.2017, passed by learned Additional Sessions Judge IV,
Barh, Patna, in Sessions Trial No. 77 of 2015, arising out of
Barh Police Station Case No. 208 of 2014, registered for the
offence punishable under Section 304B read with Section 34 of
the Indian Penal Code, whereby the learned Trial Court has
rejected an application filed on behalf of the petitioner under
Section 319 of the Code of Criminal Procedure, 1973



(hereinafter referred to as the "Code".

3. The petitioner, father of the deceased, is the informant. He alleged, in the First Information Report, that his daughter (now, deceased) was being tortured by her in-laws variously and on the alleged date of occurrence, when the petitioner had gone to see his daughter, he found the FIR named accused persons assaulting her and they set her on fire in front of the petitioner.

4. The Opposite Party No. 2 is the sister of the husband of the deceased; whereas Opposite Party No. 3 is daughter of Opposite Party No. 2. The police, upon completion of investigation, submitted charge sheet against the husband, father-in-law and mother-in-law of the deceased. So far as Opposite Party Nos. 2 and 3 are concerned, the Police, having found no material, did not send them up for trial.

5. The trial against the husband commenced. It is the case of the petitioner that in course of trial, the prosecution witnesses adduced their evidence, from which it will appear that there is sufficient evidence to proceed against Opposite Party Nos. 2 and 3 also by summoning them under Section 319 of the Code. An application was accordingly filed on behalf of the informant/petitioner before the learned Trial Court, which has been rejected by the impugned order.

6. Assailing the impugned order, learned



Counsel for the petitioner has drawn my attention to the evidence of prosecution's witnesses, who deposed at the trial and it has been submitted that on the basis of such evidence, the learned Trial Court ought to have proceeded against Opposite Party Nos. 2 and 3 also.

7. There are two reasons why I am not inclined to interfere with the impugned order. Firstly, power under Section 319 of the Code is to be exercised sparingly only if the Court is of the opinion that the person who is not an accused has committed the offence and he should also be tried together with the accused put on trial. Such step, under Section 319 of the Code, is to be taken in exceptional circumstance.

8. In the present case, the learned Trial Court, upon consideration of the evidence adduced at the trial, has come to a conclusion that no case for summoning the Opposite Party Nos. 2 and 3, under Section 319 of the Code, was made out.

9. The inference is that the learned Trial Court is of the view that it did not appear to it from the evidence that Opposite Party Nos. 2 and 3 had also committed the offence, for which they could be put up on trial together with the accused already on trial.

10. It has been rightly pointed out by learned



Additional Public Prosecutor that the independent witness (PW 4) did not support the case of the prosecution, as alleged in the First Information Report and the evidence of the interested witness (mother and father of the deceased).

11. The Trial Court had the benefit of seeing the witnesses in course of trial and thereby assessing their demeanor etc. In that background, if it appeared to the Court that it was not fit case for exercise of power under Section 319 of the Code, in my view, this Court’s interference with the said impugned order is unwarranted.

12. I do not find any merit in this application, which is accordingly dismissed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
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