

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1993 of 2015

Arising Out of PS.Case No. -228 Year- 2000 Thana -BETTIAH TOWN District-
WESTCHAMPARAN(BETTIAH)

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1. Banti, Son of Late Yunus Khan, Resident of Village : Mohalla - Hospital Road Bettiah, P.S. : Bettiah Town, District : West Champaran.

.... Petitioner

Versus

1. The State of Bihar.
2. Md. Shamsul Ain, Son of Sk. Md. Rafik, Resident of Village/Mohalla - Hospital Road Bettiah, P.S. : Bettiah Town, District : West Champaran.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Ram Adya Singh, Advocate.
For the Opposite Parties : Mr. Anish Chandra(App)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

6 27-02-2017 Heard Mr. Ram Adya Singh, learned counsel for the petitioner, Mr. Sanjiv Kumar, learned counsel appearing on behalf of opposite party no. 2 and Mr. B.N. Pandey, learned counsel for the State.

2. The petitioner filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') to quash the order dated 15.12.2014 whereby the learned Additional Sessions Judge, VI, Bettiah, West Champaran in Sessions Trial No. 422 of 2010, arising out of Bettiah Town P.S. Case No. 228 of 2000 allowed the petition of the prosecution filed under Section 319 Cr.P.C. and summoned the petitioner to face trial.



3. The informant opposite party no. 2 filed Bettiah Town P.S. Case No. 228 of 2000 under Sections 307, 379, 324 and 147 of the Indian Penal Code against Manauwar Ekbal and Banti, the petitioner. The police after completion of investigation submitted final form finding the case true against only Manauwar Ekbal. The police did not find the case true under Sections 341 and 324 of the Indian Penal Code against Banti, the petitioner. Thereupon, the cognizance of the offence under Sections 341 and 324 of the Indian Penal Code was taken and the case was transferred to the court of the learned Judicial Magistrate for trial. Charge under Sections 341 and 324 of the Indian Penal Code was framed on 27.08.2003 against Manauwar Ekbal. The prosecution examined all the witnesses and the prosecution evidence was closed on 14.01.2009. Statement of the accused was also recorded under Section 313 Cr.P.C. on 29.01.2009. On 01.07.2009, the prosecution filed a petition to commit the case to the court of Sessions under Section 323 Cr.P.C. as the counter case is pending. After hearing the parties, vide order dated 07.09.2010 the learned Judicial Magistrate committed the case to the court of Sessions for trial by the side of the counter case registered from the side of the petitioner. Again the learned Additional Sessions Judge, VI, Bettiah, West Champaran framed charge under Sections 341 and



324 of the Indian Penal Code. On 01.03.2012 against the sole accused Manauwar Ekbal the case was fixed for evidence.

4. The prosecution examined two witnesses, thereafter, the prosecution filed petition under Section 319 Cr.P.C. to summon the petitioner as both the witnesses disclosed the name of the petitioner as one of the assailants. The learned Additional Sessions Judge, Bettiah, West Champaran allowed the petition on the ground that the witnesses named the petitioner as one of the assailants and there is prima facie case against the petitioner and accordingly, directed to issue summon against the petitioner vide order dated 15.12.2014.

5. Mr. Ram Adya Singh, learned counsel for the petitioner submitted that admittedly the police did not find the case true against the petitioner and the learned Chief Judicial Magistrate after submission of charge sheet did not take cognizance against the petitioner under Sections 341 and 324 of the Indian Penal Code and cognizance was taken against only Manauwar Ekbal and charges were framed against him on 27.08.2003. The prosecution examined all the witnesses and even the statement of the accused under Section 313 Cr.P.C. was taken but the prosecution did not file any petition before the Magistrate under Section 319 Cr.P.C. The prosecution filed petition for



commitment of the case on the ground that counter case pending before the Sessions Court and on such the case was committed to the court of Sessions for trial by the side of the counter case. The petition under Section 319 Cr.P.C. was filed in the year 2012 and on that day even order taking cognizance was taken against the petitioner is bad under Sections 341 and 324 of the Indian Penal Code. Therefore, the order suffers from illegality.

6. Mr. Sanjiv Kumar, learned counsel for the informant as well as learned APP submitted that, of course, the petition under Section 319 Cr.P.C. is filed at belated stage, but the witnesses have stated that the petitioner also assaulted the informant with iron rod.

7. On perusal of the order, itself, it appears that the police did not find the case true against the petitioner and the case under Sections 341 and 324 of the Indian Penal Code was found true against only one accused Manauwar Ekbal of which cognizance was taken. Even all the witnesses have been examined, but the prosecution did not file any petition under Section 319 Cr.P.C. After 12 years of the occurrence, the learned Additional Sessions Judge allowed the petition under Section 319 Cr.P.C. and issued summons to the petitioner to face trial for the offences under Sections 341 and 324 of the Indian Penal Code being



unmindful of this fact that he is not competent legally to take cognizance of the offence against the accused after ten years of the occurrence under Sections 341 and 324 of the Indian Penal Code.

8. Therefore, I find that the order suffers from illegality and fit to be set aside. Accordingly, the order impugned dated 15.12.2014 is quashed.

9. In the result, this quashing petition is allowed.

(Prabhat Kumar Jha, J.)

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