

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 63469 of 2017

Arising Out of PS. Case No.-118 Year-2014 Thana- Sidhwara District- Darbhanga

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1. Binod Sahani, Son of Rajendra Sahani,
 2. Rajendra Sahani, son of Late Ram Sharan Sahani, Both resident of Village- Agayaspur, Police Station- Singhwara, District- Darbhanga.

... .. Petitioners

Versus

1. The State of Bihar.
2. Chulhai Bhagat, Son of Jamuna Bhagat, Both resident of Village- Agayaspur, Police Station- Singhwara, District- Darbhanga.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Shivendra Kumar Sinha
For the Opposite Party/s : Mr. Nityanand

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2. 03-01-2018 Heard Sri Shivendra Kumar Sinha, learned counsel for the petitioner and Sri Nityanand, learned Addl. Public Prosecutor.

2. Two petitioners, invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973, have prayed for quashing of an order dated 08-11-2017 passed by the learned Additional District & Sessions Judge – IV, Darbhanga (hereinafter referred to as the ‘Trial Judge’) in Sessions Trial No. 305 of 2015. By the said order, the learned Trial Judge has allowed the petition filed on behalf of the prosecution for summoning three persons to be examined as witnesses, whereas, those persons were not named as witness in



the chargesheet.

3. Sri Sinha, learned counsel for the petitioners, assailing the order, submits that those witnesses, who were neither cited in the chargesheet nor their statement under Section 161 of the Cr.P.C. was recorded, were only summoned by the prosecution to fill-up the gap of the prosecution, which is not permissible in the eye of law and as such, a prayer has been made to set aside the order impugned.

4. Sri Nityanand, learned Addl. Public Prosecutor, opposing the prayer, by way of referring to the impugned order, submits that Lalit Bhagat had signed as a witness on the *fardbeyan*, but to the reasons best known to the investigating officer, he was not cited as a witness in the chargesheet and with regard to summoning other two persons namely Manjoo Devi and Jay Kishan Sah, it has been argued that their name has come in the evidence of informant and as such, the learned Trial Judge, considering the fact that Lalit Bhagat had signed on the *fardbeyan* as a witness as well as the fact that name of other two persons namely Jay Kishun Sah and Manjoo Devi had transpired in the evidence of informant, has rightly summoned them to be examined as witnesses.

5. Besides hearing learned counsel for the parties, I have



also perused the materials on record. On going through the impugned order, the Court is satisfied that learned Trial Judge has committed no error in allowing the petition of the prosecution to summon those three persons as witnesses.

6. Learned counsel for the petitioners has alternatively argued that Binod Sahani (petitioner no. 1) is already in custody and as such, allowing the petition may amount to further incarceration of the petitioner no. 1 without any evidence, since though 15 (fifteen) prosecution witnesses have been examined, none had supported the prosecution case and only with a view to further detain the petitioner no. 1, such petition has been filed.

7. Considering the facts and circumstances, particularly the fact that Lalit Bhagat has already stood as a witness in the *fardbeyan* as well as the fact that name of other two witnesses namely Jay Kishun Sah and Manjoo Devi had come in the evidence of informant, there is no apparent error in the impugned order by way of summoning them as witnesses.

8. Accordingly, there is no reason to interfere with the impugned order, however; considering the fact that petitioner no. 1 is in custody, while dismissing the present petition, it is necessary to observe that the prosecution may complete examination of aforesaid summoned witnesses preferably within



a period of two months from the date of receipt/production of a copy of this order. Thereafter, the learned Trial Judge may take all effort so that the case may come to its logical end without unnecessary delay.

9. The petition stands dismissed with observation, as indicated hereinabove.

10. Let a copy of this order be sent to the court below forthwith.

(Rakesh Kumar, J.)

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