

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7701 of 2016

Arising Out of PS.Case No. -143 Year- 2014 Thana -BUXAR District- BUXAR

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1. Bipin Yadav, son of Bhola Yadav @ Bhola Singh Resident of Village- Budhadih, Police Station- Rajpur, District- Buxar. Presently residing at Charitravan Buxar, Police Station- Buxar (T), District- Buxar.
 2. Narendra Yadav @ Nagendra Yadav, son of Tej Narayan Singh, resident of Village- Bahuara, Police Station- Rajpur, District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar-Advocate
Mr. Rahul Nath-Advocate

For the Opposite Party/s : Mr. Parmeshwar Mehta-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 22-11-2018

Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor.

2. Petitioners are aggrieved by an order dated 18.08.2015 passed by the Additional Sessions Judge-6th, Buxar in Sessions Trial No.284 of 2014, whereby and whereunder both the petitioners including Anil Yadav have been summoned to face trial under the guise of Section 319 of the Cr.P.C.

3. It has been submitted on behalf of petitioners that they were not named in the F.I.R. It has also been submitted that during course of investigation, their names cropped up, but were not sent up for trial. Nothing remains against them to justify



summoning of the petitioners in accordance with Section 319 of the Cr.P.C. Apart from this, it has also been submitted that all the prosecution witnesses have already been examined, statement of custodial accused has already been recorded and so, in case petitioners are allowed to join hands with the main accused, then in that circumstance, the trial will linger causing prejudice to the interest of the custodial accused. Side by side, the interest of witnesses will also jeopardize.

4. It has also been submitted that the occurrence is of the Year 2012, six years have elapsed and that being so, it would not be prudent to allow addition of the accused and further, permitting de novo trial. So, taking into account the stage of the case, the nature of the allegation having attributed against the petitioners did not justify the legality of the order impugned, whereupon same is fit to be set aside.

5. On the other hand, learned Additional Public Prosecutor submitted that the order impugned is just, legal, proper as well as in accordance with law. Furthermore, it has also been submitted that on account of collusiveness of the police, petitioners including Anil Yadav were exonerated, irrespective of the fact that ample materials were present in the case diary for their summoning, which the learned cognizance taking Court



slipped and in likewise manner, the Sessions Judge also after having the case committed, under the umbrella of Constitution Bench decision of the Hon'ble Apex Court in *Dharam Pal and others vs. State of Haryana and another reported in (2014) 13 SCC 306*, identifying the power under Section 193 Cr.P.C. Apart from this, it has been submitted that application of Section 319 of the Cr.P.C. remained intact, which the learned lower Court has rightly exercised. Accordingly, instant petition is fit to be dismissed.

6. From perusal of the record, it is evident that ten witnesses have been examined on behalf of prosecution, but petitioners have filed deposition of only three witnesses, PW-3, PW-6 and PW-9, victim and on account thereof, the evidence of remaining witnesses could not be known. Moreover, from the evidence of the victim (PW-9), it is apparent that presence of these two petitioners including others happen to be, after kidnapping of the victim as well as having consecutively raped at the end of the custodial accused, during course thereof, Anil Yadav, Munna Singh and Manu Rai along with Bipin Yadav and Narendra Yadav forced her to sign over a blank paper stating the fact that she got herself married with Manu Rai in order to escape from trial and on being coerced, she had put signature "Bandana Kumari" and then



thereafter, all of them, took her and then, left her in company of Manu Rai at the station. That means to say, petitioners, being relative of the main accused, were knowing since before regarding kidnapping of the victim, kept confined, raped and for getting rescued from prosecution, caused the victim to say that she voluntarily married with Mannu, and further, procured her signature on blank paper, which has been used as valuable document and so, played actively, which if remained unrebutted, certainly attract conviction under different provisions of law.

7. In *Hardeep Singh vs. State of Punjab and others with Manjit Singh v. State of Punjab and another with Babubhai Bhimabhai Bokhiria and another vs. State of Gujarat and others with Rajendra Sharma and another v. State of M.P. and another with Ravinder Kumar and another v. State of Haryana and others with Juned Pahalwan v. State of U.P. and another with Rajesh alias Sanjai v. State of U.P. and another with Ramdhan Mali v. State of Rajasthan and another with Tej Singh v. State of U.P. reported in A.I.R. 2014 SC 1400*, it has been held:-

“105. [In Sohan Lal & Ors. v. State of Rajasthan](#), (1990) 4 SCC 580, a two-Judge Bench of this Court held that once an accused has been discharged, the procedure for enquiry envisaged under [Section 398](#)



Cr.P.C. cannot be circumvented by prescribing to procedure under [Section 319](#) Cr.P.C.

106. [In Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors.](#), AIR 1983 SC 67, this Court held that if the prosecution can at any stage produce evidence which satisfies the court that those who have not been arraigned as accused or against whom proceedings have been quashed, have also committed the offence, the Court can take cognizance against them under [Section 319](#) Cr.P.C. and try them along with the other accused.”

8. From the order impugned, it is evident that learned lower Court had not arrayed these petitioners along with Anil Yadav for an offence punishable under Section 376 of the I.P.C. rather for an offence punishable under Sections 366, 120B/34 of the I.P.C. From the latter part of the order, it is evident that trial of co-accused Manu Rai is going on under Sessions Trial No. No.48 of 2015 as arrested subsequently and the learned lower Court in the aforesaid background has tagged the case of the petitioners along with the same, which happens to be against the spirit of law. For better appreciation, ***Section 319 of the Cr.P.C.*** is quoted below:-

“319. Power to proceed against other persons



appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

9. That being so, affirming the finding recorded by the learned lower Court so far summoning of these petitioners



along with Anil Yadav are concerned, the subsequent finding is set aside directing the lower Court to proceed in accordance with law.

10. In terms thereof, instant petition is dismissed.

(Aditya Kumar Trivedi, J)

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