

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12082 of 2017

Arising Out of PS.Case No. -115 Year- 2012 Thana -DURGAWATI District- BHABHUA
(KAIMUR)

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Shailesh Kumar Singh Son of Sri Shyam Narayan Singh @ Bansh Narayan Singh, Resident of Village-Dhanechha P.S. Durgawati District Kaimur at Bhabhua.

.... Petitioner

Versus

1. The State of Bihar
2. The Haridwar Singh Son of late Ram Dhari Singh
3. Ajay Singh Son of Late Ram Dhari Singh
4. Sujeet Singh Son of Sri Musaffir Singh. O.P> No. 2 to 4 Belong to the Village Dhanechha P.S. Durgawati District Kaimur at Bhabhua.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Raghunandan Kumar Singh

For the Opposite Party/s : Mr. Ashok Kumar

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

- 2. 29-10-2018** Heard learned counsel for the petitioner and learned counsel representing the State.

Petitioner is aggrieved by order dated 09.01.2017 passed by learned Additional Sessions Judge – 4th, Kaimur at Bhabhua in S. Tr. No. 275/2013/167/2016 arising out of Durgawati P.S. Case No. 115/2012 for the offences under Sections 341, 342, 324, 379, 307, 504/34 of the Indian Penal Code.

By the impugned order the learned trial court has refused to invoke its jurisdiction under Section 319 Cr.P.C. to issue summons to the opposite party nos. 2 to 4.



Learned counsel for the petitioner submits that this petitioner is the injured of the case and being an injured witness if he has named these opposite parties as well in course of deposition in course trial, it would be sufficient for summoning them as an accused to face trial.

On the other hand, learned counsel representing the State submits that initially these opposite parties were named accused in the F.I.R., but in course of investigation police did not find any material to proceed against them and hence they were not sent up for trial.

Learned counsel submits that at the relevant stage the informant did not challenge the final form submitted against these petitioners and the order accepting the final form was also not challenged before any competent authority. It is submitted that at this stage when the trial is at the verge of conclusion and out of five prosecution witnesses, three have been declared hostile, whereas the fourth one has already died and her deposition cannot be tested now by the accused, the summoning of the opposite parties on the basis of the statement of the present petitioner alone would not be just and proper.

Considering the facts and circumstances of the



case as also after hearing learned counsel for the parties, this court is of the considered opinion that when three prosecution witnesses have already been declared hostile and the fourth one has died, summoning of opposite parties no. 2 to 4 on the statement of the present petitioner alone is not required, and it would not be just and proper to subject all these opposite parties to the ordeals of trial when at the first instance after investigation no material could be collected against them and informant had not challenged the final form.

This application is thus dismissed.

(Rajeev Ranjan Prasad, J)

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