

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.648 of 2015

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1. Udai Kumar Singh @ Udai Narayan Singh, Son of Late Yugal Prasad Singh resident of Anandgarh Colony, P.S. Barari, District- Bhagalpur, Bihar.
 2. Chandan Kumar Singh Son of Udai Kumar Singh resident of Anandgarh Colony, P.S. Barari, District- Bhagalpur, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 08-05-2018

The petitioner No. 1 has challenged the order dated 01.05.2015 passed by the learned 5th Additional Sessions Judge, Bhagalpur in Sessions Trial No. 646 of 2002 whereby the petitioner No. 1 has been summoned to face trial along with other accused persons under the provisions of Section 319 of the Code of Criminal Procedure.

The learned counsel for the petitioner No. 1 has submitted that the case is of the year 1998. The police, after investigation did not send up the petitioner No. 1 for trial. The other persons were put on trial. Six witnesses were examined during the course of trial, out of whom, one of the witnesses viz. witness No. 4 was declared hostile. After the trial was almost over, a petition was filed on behalf of the informant seeking



summoning of the petitioner No. 1 and his son as some of the witnesses had spoken against them. The order impugned has been passed on such an application preferred by the prosecution.

I have gone through the deposition of the witnesses. The P.W.s 3, 5, 6 and 7 have only, in a general manner, stated that the petitioner No. 1 and his son along with others fired from a weapon from behind a window but the firing resorted to by them did not hit anybody; rather the bullet hit the wall. The aforesaid statements of the witnesses do not make out a strong case for conviction of the petitioner No. 1 in this case. While saying so, this Court has also taken note of the fact that the occurrence is of the year 1998 and till the trial of the case, no effort was made by the prosecution to have the petitioner No. 1 or his son summoned to face trial. It was only at the fag end that such an application had been filed. That apart, the Court below has summoned the petitioner No. 1 on the ground of there being a *prima facie* case against him.

It has been argued by the learned counsel for the petitioner that the requirement of Section 319 of the Code of Criminal Procedure is to find out something more than mere *prima facie* case. At the stage of Section 319 of the Code of Criminal Procedure, a stronger evidence of complicity of a person who is summoned, is required. Thus, what test is to be applied is



one which is more than *prima facie* case as exercised at the time of framing of the charge but short of satisfaction to the extent that the evidence if goes unrebutted, would definitely lead to conviction.

From the tenor of the deposition of P.W.s 3, 5, 6 and 7, it does not appear to have passed the aforesaid test.

For the facts stated above, the order dated 01.05.2015 passed by the learned 5th Additional Sessions Judge, Bhagalpur in Sessions Trial No. 646 of 2002 cannot be sustained in the eyes of law and the same is set aside. The Trial Court shall continue with the trial of other accused persons.

The application stands allowed.

(Ashutosh Kumar, J)

Shageer/-

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