

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.55508 of 2015

Arising Out of PS. Case No.-25 Year-2011 Thana- GADHPURA District- Begusarai

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1. Binod Choudhary
 2. Manoj Choudhary Both are Sons of Shankar Choudhary Resident of Village- Kumharso, Police Station- Gadhpura, District Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Saroj Kumar Sharma

For the Opposite Party/s : Mr. Mukeshwar Dayal

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 02-11-2018

Heard learned counsel for the petitioners as well
as learned APP for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 11.08.2015 passed by Additional Sessions Judge-VII, Begusarai in S.T. No. 35 of 2012 arising out of Garhpura P.S. Case No. 25 of 2011, whereby the learned lower court summoned the petitioners to face the trial along with the other accused persons already facing the trial under Section 319 Cr.P.C.

3. It is submitted by learned counsel for the petitioners that in the F.I.R. the informant has not named the petitioners in the occurrence rather has named Tekana Mian



and Shankar Choudhary. After conclusion of the investigation, I.O. has not found the complicity of the petitioners in the occurrence and submitted chargesheet only against the accused Shankar Choudhary and accordingly cognizance of the case has been taken only against the said accused. Thus there is no material on record indicating the complicity of the petitioners in the occurrence and learned lower court has wrongly summoned the petitioners to face the trial along with the other accused persons facing the trial in the case. Hence the aforesaid order passed by the learned Trial Court is an abuse of the process of the Court and is liable to be quashed.

4. On the other hand, learned APP for the State opposing the quashing petition submitted that albeit petitioners are not named in the F.I.R. and no chargesheet has been submitted against them but two witnesses namely PW-2 and PW-3 (informant) examined in the case during the course of trial have specifically named the petitioners in the occurrence. Hence, petitioners have been rightly summoned under Section 319 Cr.P.C.

5. From perusal of the record, it appears that albeit in Garhpura P.S. Case No. 25 of 2011 lodged by the informant Kamal Devi regarding murder of her husband Ram



Prakash Rai, only Tekana Mian and Shankar Choudhary have been made accused and after investigation of the aforesaid case, I.O. has submitted chargesheet against the accused Shankar Choudhary only and cognizance of the offence has also been taken only against Shankar Choudhary. But the informant Kamal Devi has filed the protest petition making seven persons including the petitioners accused in the said occurrence. In the said protest petition, she has stated that she had divulged the name of the petitioners and other accused persons in the occurrence to the police but police has not named the aforesaid petitioners and other accused persons in the occurrence in the F.I.R. She had also divulged their name in the occurrence to the I.O. in her further statement. During the course of trial, three witnesses have been examined by the prosecution. Out of them, PW-2 and PW-3 (informant) have named the petitioners along with other accused persons involved in the occurrence of murder of her husband.

6. In view of the aforesaid facts and circumstances in my considered opinion, there is sufficient material against the petitioners to summon them to face the trial along with other accused persons already facing trial. I do not find any illegality in the aforesaid order, hence this petition is



devoid of merit and is accordingly dismissed.

(Prakash Chandra Jaiswal, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	06.11.2018
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