

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3784 of 2018

Arising Out of PS. Case No.-38 Year-2001 Thana- NAUBATPUR District- Patna

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Kumud Kumari D/o Kulshekhar Sharma @ Bhola Singh, R/o Village- Alipur,
P.S.- Naubatpur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Kanti Devi W/o Harendra Sharma,
3. Sushma Kumari D/o Rabindra Sharma, Both R/o Village- Alipur, P.S.-
Naubatpur, District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Binod Kumar Sinha, Advocate

For the Opposite Party/s : Mr.Sri Nand Kishore Pd

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 19-11-2019 The petitioner/informant has challenged the

order dated 21.08.2017 passed by the learned

Additional Sessions Judge-II, Danapur in connection with

Sessions Trial No. 753 of 2002, arising out of Naubatpur

P.S. Case No. 38 of 2001, whereby the application

preferred by the prosecution for summoning the opposite

parties no. 2 and 3 for facing trial along with other

accused persons has been rejected.

It appears that opposite parties no. 2 and 3

were also made accused along with other accused



persons but they were not chargesheeted and hence not sent up for trial. In the trial, after about nine witnesses were examined, the application on behalf of the prosecution for summoning opposite parties no. 2 and 3 was filed which as stated above was rejected.

From the perusal of the order impugned, it appears that out of nine witnesses, three of the witnesses were independent witnesses viz. P.Ws. 5, 6 and 7 but P.Ws. 6 and 7 for their not having supported the prosecution version in its entirety, were declared to be hostile. So far as the deposition of other witnesses are concerned, they have stated that the opposite parties no. 2 and 3 also participated in the occurrence. Some of the witnesses have spoken about their having abused the prosecution side and of having exhorted others to take part in the occurrence. Some of the witnesses have also stated that one of the accused persons of the case viz. Harendra Kumar was asked by opposite party no. 2 to shoot the informant and others.



The court below refused to accede to the request of the prosecution for summoning opposite parties no. 2 and 3 on the ground that all the witnesses who have supported the prosecution version and have named opposite parties no. 2 and 3 are interested witnesses and are related to the informant and the victims. In that background, the court accorded due weightage to the deposition of P.Ws. 5, 6 and 7 who have not even whispered about the names of opposite parties no. 2 and 3.

The law with respect to summoning an accused under Section 319 Cr.P.C. is too well settled now for it to be recounted. It is not necessary that if a person's name is taken during the course of trial by any witness, that the trial court ought to turn its gaze towards such a person. It has to be seen by the trial court whether such accusation is serious and that such an accusation would lead to a different outcome of the trial proceedings.

The manner of hurling accusation against



opposite parties no. 2 and 3 by P.Ws. 1, 2, 3 and 4 clearly evinces a deliberate attempt to anyhow implicate the aforesaid female members of the accused side. It is precisely for this reason that the prayer of the prosecution was refused.

This Court on perusing the order impugned as also the materials on record is of the view that the order impugned is not fit to be interfered with.

The petition stands dismissed.

(Ashutosh Kumar, J)

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