

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4737 of 2017

Arising Out of PS. Case No.-433 Year-2015 Thana- BARBIGHA District- Sheikhpura

Rakesh Kumar Son of Devendra Mahto, Resident of Koyari Bigha, P.O. and
P.S. Barbigha, District - Sheikhpura

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bajarangi Lal, Adv.

For the Opposite Party/s : Smt. Anita Kumari, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 20-06-2019 Heard learned counsel for the petitioner as well as
learned APP.

For an occurrence case and counter case has been instituted. The case instituted at the end of the petitioner is Barbigha P.S. Case No.432/2015 while at the end of the adversary, it happens to be Barbigha P.S. Case No.433/2015. Petitioner is one of the accused of Barbigha P.S. Case No.433/2015. Both the cases were investigated followed with submission of charge sheet and so far present case is concerned, vide order dated 20.04.2016 cognizance of an offence punishable under Section 448, 323, 504, 389/34 of IPC has been taken up whereupon, petitioner along with others has been summoned to face trial. After appearance of the accused persons the charge has been framed vide order dated 20.09.2016 against



the petitioner and others, subject matter of instant petition.

While challenging the order impugned, it has been submitted that petitioner's presence has been shown during midst of commission of the occurrence and that being so, there would not be an application of Section 34 of the IPC more particularly, there would not be an opportunity for pre-meeting of the mind, *sine qua non* for applicability of Section 34 of the IPC. Furthermore, it has also been submitted that on the alleged date petitioner was at Mathura Junction where he happens to be employed (being railway employee) and so, it was not at all feasible for him to be present at the place of occurrence. So on the pretext of alibi, charge having been framed against the petitioner through the order impugned is nothing but full of absurdity. Therefore, same is fit to be set aside.

The learned APP opposed the same.

Version and counter version for an occurrence is permissible which has been settled at rest by catena of judicial pronouncement. That being so, it could not be said that for an occurrence so alleged at the end of the rival party as per their version could not be entertainable.

Furthermore, it has also been settled at rest that plea of alibi is always subject to trial more particularly in the



background of the fact that genuineness of the certificate having so granted is to be ascertained in accordance with law and for that, trial has to be allowed to continue.

At the stage of framing of charge the defence version or the document having at the end of the defence unless and until being impeachable, could not be taken into consideration as has also been held consistently, such as **State of Orissa vs. Debendra Nath Padhi** reported in (2005) 1 SCC 568 and followed in **Rukmini Narvekar vs. Vijaya Satardekar & Ors.** reported in (2008) 14 SCC 1, also followed in **Harshendra Kumar D vs Rebatilata Koley Etc.** reported in 2011 (3) PLJR 100 SC.

Consequent thereupon, instant petition lacs merit and is accordingly, dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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