

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43462 of 2019

Arising Out of PS. Case No.-95 Year-2016 Thana- RASULPUR District- Saran

Swaminath Mahto Son of Mahesh Mahto Resident of Village- Chandraura,
P.S.- Rasulpur, District- Saran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Harish Kumar

For the Opposite Party/s : Mr. Md. Aslam Ansari, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 20-08-2019 Heard the learned counsel for the petitioner and

the State.

The petitioner / informant of Rasulpur P. S. Case
No. 95 of 2016 has challenged the order dated 01.03.2019
passed by the learned Additional Sessions Judge-11th, Saran
at Chapra in Sessions Trial No. 574 of 2017, whereby the
application preferred by the petitioner / informant for
summoning the accused persons, who have not been
impleaded in the present petition as opposite parties, has
been rejected.

From the perusal of the order impugned, it appears
that the trial court has analyzed the depositions of five



prosecution witnesses who have been examined till date in the case. But for P.W. 3, namely, Raju Mahto, who is said to have named such accused persons who are sought to be summoned to face trial, but such statement was found to be absolutely vague and general. The other prosecution witnesses have learnt about the occurrence from the aforesaid Raju Mahto.

The trial court therefore was of the view that in terms of the judgement of the Supreme Court in ***Hardeep Singh Versus State of Punjab [(2014) 3 SCC 1992]***, the trial court was required to find out more than *prima facie* case for summoning a person for trial along with other accused persons. The trial court, on finding that none of the witnesses except P.W. 3 has stated anything about the occurrence or participation of such persons who are sought to be summoned, no order could be passed accepting the plea of the informant / prosecution.

The power under Section 319 Cr.P.C. is an extraordinary power and is also discretionary. It has therefore to be exercised sparingly and only in such cases



where the circumstances reveal that proper justice would not be meted out in the case unless such other persons are also summoned to face trial along with other accused persons.

The entire evidence through the mouth of such witnesses who had till that time been examined, has been analysed and it has been found by the trial court that no useful purpose would be served in summoning such persons to face trial. Otherwise also, merely on such persons having been named by anyone of the witnesses at the trial would not permit the trial court to turn its gaze from the main case and look at the complicity of the others.

This Court finds no fault with the order impugned in the present petition.

The petition therefore is dismissed.

(Ashutosh Kumar, J)

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