

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14548 of 2016

Arising Out of PS. Case No.-260 Year-2013 Thana- CHHATAPUR District- Supaul

Shambhu Kumar Yadav Son of Late Ghutar Yadav, Resident of Village-
Daharia, P.S.- Chhatapur, District- Supaul.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Buchar Yadav
3. Deodutt Yadav
4. Dukhi Yadav
O.P. No. 2 to 4 are sons of Late Manager Yadav
5. Arvind Yadav son of Bindo Yadav
6. Jai Kumar Yadav son of Deodutt Yadav
7. Munna Kumar, son of Siyaram Yadav All opposite Parties No.2 to 7 are
resident of Village- Daharia, P.S.- Chhatapur, District- Supaul.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Murari Narain Chaudhary, Advocate Mr. Vijay Kumar, Advocate Mr. Aniket Kumar, Advocate
For the Opposite Party/s :		Mr. Shyam Kumar Singh, App

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date : 17-07-2019

Heard learned counsel for the petitioner and
learned Additional Public Prosecutor for the State.

2. The petitioner is informant of Chhatapur P.S.
Case No.260 of 2013, registered under Sections 147, 148, 149,
341, 323, 324, 447, 504 and 302 of the Indian Penal Code
against the named accused.

3. After investigation the police submitted charge



sheet only against accused Bindo Yadav @ Binod Kumar Yadav, Siyaram Yadav, Indo Yadav, Lalo Yadav and Sushil Yadav. Investigation was kept pending against FIR named accused persons, namely, Buchur Yadav, Arvind Yadav, Devdatt Yadav, Dukhi Yadav, Jay Kumar Yadav and Munna Kumar. In the meantime, trial started in respect of the charge-sheeted accused vide S.T. No.20 of 2014.

4. After examination of certain prosecution witnesses, the petitioner filed a petition, under Section 319 Cr.P.C., for summoning those accused also against whom though investigation was pending, however, name surfaced in the evidence of prosecution witnesses. Prayer has been refused simply on the ground that investigation against them is still pending.

5. Section 319 Cr.P.C. does not bar summoning of the accused against whom the police investigation is still pending. Only requirement is that in course of any inquiry or trial it should appear from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused already facing the trial. The police has power to further investigate the case even after submission of report under Section 173(3) Cr.P.C.



against some of the co-accused. However, if the evidence collected during investigation was available on the record, the Court-below was competent enough to take cognizance against those accused also against whom investigation was pending before the police and in the same manner if the prosecution evidence has come disclosing involvement of other persons also in the trial already going on, the trial Court could have exercised the power of summoning the accused.

6. Hence, the impugned order is set aside as it is based on erroneous reason that since investigation against those persons has been kept pending by the police they cannot be summoned to face trial along with others in spite of availability of prosecution evidence against them. The matter is remitted back to the learned Court-below to pass order according to law.

7. Accordingly, the application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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