

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.3380 of 2017**

Arising Out of PS. Case No.-27 Year-2012 Thana- KHODAWANDPUR District- Begusarai

Ram Sankar Mahto S/o Sri Maha Dev Mahto, R/o Vill.- Malmalla, P.S.-  
Khodawandpur, Dist.- Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Pankaj Mahto, S/o Ram Naresh Mahto.
3. Anil Mahto, S/o Radheshyam Mahto.
4. Bihun Mahto, S/o Chandradeo Mahto, All are R/o Vill.- malmalla, P.S.-  
Khodwandpur, Dist.- Begusarai.

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Shubhesh Pandey, Advocate  
Mr. Murlidhar Mishra, Advocate  
For the Opposite Party/s : Mr. S. Ehteshamuddin  
For the opposite party no. 2 to 5 : Mr. Vijay Anand, Advocate

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**ORAL ORDER**

7      13-11-2019                      Heard the learned counsel for the petitioner,  
  
opposite parties and the State.

The petitioner, who is the informant of the case, has challenged the order dated 17.11.2016 passed by the learned Additional Sessions Judge, 4<sup>th</sup> , Begusarai in connection with Sessions Trial No. 266 of 2013 arising out of Khodawandpur P.S. Case No. 27 of 2012, whereby the prayer made on his behalf for summoning the opposite parties viz. Pankaj Mahto, Anil Mahto and Bishun Mahto to face the trial, has been rejected on the



ground that such petition under Section 319 Cr.P.C. was filed at a premature stage i.e. before the examination of the I.O. and the Medical Officer.

Learned counsel for the petitioner has submitted that the court below erred in point of law in holding that the application was filed at a premature stage.

The petition was filed after the examination of five of the prosecution witnesses, out of whom three have categorically named the opposite parties as having conspired and participated in the occurrence. The aforesaid witnesses have also stated that such statement was given by them during the course of investigation also but the investigating officer, in collusion with the accused persons, did not send up the opposite parties to face the trial.

Learned counsel appearing for the opposite parties has submitted that one of the investigating officers in this case has now been examined whereas the



other investigating officer is yet to be examined by the trial court. The doctor has not yet been examined.

This Court is of the view that whatever materials were brought before the court through the mouth of witnesses, that ought to have been assessed for either accepting the prayer of the petitioner/informant or rejecting his request for summoning the opposite parties for facing the trial with the other accused persons. Nonetheless, the order impugned reflects that the court was not satisfied with the materials available before it to turn its gaze towards the opposite parties also for summoning them to face trial. It is precisely for this reason that the court below has said that the petition under Section 319 Cr.P.C. was premature and that it can be assessed properly only after the examination of the investigating officer and the doctor.

Under the aforesaid circumstances, without interfering with the order impugned, this Court provides



that the trial court ought to take all possible steps for procuring the attendance of the other investigating officer as well as the doctor and after their examination, if any petition under Section 319 Cr.P.C. is filed by petitioner/informant, the same ought to be considered in correct perspective and an order be passed without any unnecessary delay.

After the examination of the second investigating officer and the doctor and in the event of the petitioner/informant filing an application for summoning the opposite parties for facing trial, the court below shall not proceed further in the trial before disposing of such application filed afresh.

With the aforesaid direction/observation, the petition stands disposed of.

**(Ashutosh Kumar, J)**

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