

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49332 of 2014

Arising Out of PS. Case No.-229 Year-2009 Thana- BARHARA (SINHA) District- Bhojpur

Pawan Singh @ Pawan Kumar Singh Son of Late Kameshwar Singh Resident of Moajampur, P.S. Barahara (Sinha), District- Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rajendra Singh Son of Ram Chandra Singh
3. Raghubir Singh Son of Ram Chandra Singh
4. Bipul Singh Son of Deo Ballav Singh
All Residents of village - Maujampur, P.S. Barahara, District- Bhojpur
5. Bablu Singh Son of Ramesh Singh Resident of Village - Laharpa, P.S. Agiaon (Garahani), District- Bhojpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ravindra Kumar, Advocate
For the Opposite Party/s	:	Mr. Jharkhandi Upadhyay, APP
	:	Mr. Rajeeva Roy with
	:	Mr. Makardhwaj Upadhyay, Advocates

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 20-06-2019

Heard learned counsel for the petitioner; learned APP for the State and learned counsel for the opposite parties no. 2 to 5.

2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

“That this is an application for quashing the order dated 20.05.2014 passed by Additional Sessions Judge-1st, Ara in Session Trial No. 174 of 2013 arising out of Barahara (Sinha) P.S. Case No. 229 of 2009 dated 06.09.2009 by which the Ld. Additional Session Judge-1st, Ara has refused to take cognizance and issue summon against the opposite party no. 2 to 5.”



3. The petitioner was the informant of Barahara (Sinha) PS Case No. 229 of 2009 dated 06.09.2009. The allegation was that the opposite parties no. 2 to 5 and two others had come with firearms and shot at the father of the petitioner resulting in his death. After investigation, the police submitted final report in which only one co-accused Devbalam Singh was sent up for trial while others, including the opposite parties no. 2 to 5 were not sent up for trial. Being aggrieved by the fact that the opposite parties no. 2 to 5 were not summoned by the Court, the petitioner, being the informant of the case, has filed the present application.

4. Learned counsel for the petitioner submitted that he himself was an eye-witness of the incident and three other witnesses namely Bhuneshwar Singh, Sudhir Singh and Nathuni Singh have also seen the opposite parties no. 2 to 5 running from the place of occurrence with firearms in their hands. It was submitted that in such view of the matter, when the presence of the opposite parties 2 to 5 at the scene of occurrence along with firearms and the conduct of them running away has been witnessed by three persons, including the petitioner, being the informant, non-summoning of them to face trial is highly improper and in fact illegal. It was submitted that such blatant omission on the part of the Court requires to be interfered with. It was further submitted



that initially even the Inspector who has supervised the case at paragraph no. 38 of the case diary and subsequently the Deputy Superintendent of Police at paragraph no. 42 of the case diary, who has also supervised the case has found the complicity of the opposite parties 2 to 5 also in the case but subsequently for reasons unexplained the Superintendent of Police, at paragraph no. 110 of the case diary has directed for submitting final form in the case.

5. Learned APP, assisting from the case diary, fairly admitted that besides the allegation made in the FIR and the re-statement of the petitioner in the capacity of informant, being an eyewitness to the incident; Bhuneshwar Singh, an eyewitness, whose statement has been recorded at paragraph no. 8 of the case diary; Sudhir Singh, another FIR witness whose statement has been recorded at paragraph no. 15 of the case diary and Nathuni Singh, another eye witness whose statement has been recorded at paragraph no. 16 have all stated with regard to the opposite parties no. 2 to 5 running away with firearms from the place of occurrence.

6. Learned counsel for the opposite parties no. 2 to 5 submitted that the witness Harendra at paragraph no. 74 of the case diary has stated that the informant had come to his place looking for his father. However, on a query of the Court as to how the



same was relevant when the informant has seen the occurrence and is eyewitness and Bhuneshwar Singh, Sudhir Singh and Nathuni Singh are witness to the fact that the opposite parties 2 to 5 were running away with firearms in their hands from the place of occurrence, learned counsel could neither controvert the fact nor meet the query of the Court.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the order impugned not summoning the opposite parties no. 2 and 5 to face trial cannot be sustained. At the time of taking of cognizance and issuing of process, the Court has only to see as to whether there is evidence/material to indicate their complicity in the crime. Beyond that, the Court is not required to meticulously judge the evidence or its authenticity at such stage. Such stage is only subsequent, when the accused appear before the Court and explain the position. The Court is also not supposed to weigh as to whether the materials available are sufficient or would lead to conviction which is to be decided at a later stage and after a full fledged trial.

8. In the present case, the Court finds that there is sufficient material at the stage of taking of cognizance which does not justify the Court not to summon the opposite parties no. 2 to 5



in the matter. The Court would only indicate that exercise of power under Section 482 of the Code is both for preventing the abuse of the process of the Court as well as for securing the ends of justice. In the present case, at the stage of taking of cognizance, the Court finds that there has been miscarriage of justice when the persons against whom there appears to be material, at least for summoning them before the Court on the basis of there being strong indication with regard to their complicity in the crime, not doing so, would lead to miscarriage of justice.

9. Accordingly, for reasons aforesaid, the application is allowed. The order impugned dated 20.05.2014 passed by the Additional Sessions Judge-1st, Ara in Sessions Trial No. 174 of 2013 arising out of Barhara (Sinha) PS Case No. 229 of 2009 stands set aside. The matter is remanded to the Court concerned for fresh consideration, in accordance with law, on the basis of materials available before it.

(Ahsanuddin Amanullah, J)

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