

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6341 of 2015

Arising Out of PS. Case No.-17 Year-1990 Thana- SHEOHAR District- Sheohar

1. Baliram Singh son of late Shyam Nandan Singh
2. Abhiram Singh, son of late Shyam Nandan Singh
3. Krishna Kant Singh, son of Shri Baliram Singh All resident of village Fatehpur, P.S. and District Sheohar
4. Daya Shankar Singh, son of late Uday Bahadur Singh resident of village Khartari, P.S. Chiraiya, District East Champaran

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mrityunjay Kumar, Adv

For the Opposite Party/s : Mr.Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 27-06-2019

Heard learned counsel for the parties.

2. Sheohar P.S.Case No.17 of 1990 was registered under Sections 307, 323, 324 and 325 I.P.C. as well as under Section 27 of the Arms Act on the fardbeyan of Chitranjan Singh. During investigation, one of the injured, namely, Abhay Singh died, hence, Section 302 I.P.C. was also added. Chitranjan Singh had also sustained firearm injury.

3. Bereft of other details, allegation in the FIR is that petitioner-Baliram Singh, petitioner-Krishna Kant Singh and petitioner-Abhiram Singh armed with gun and others were there when the informant was returning from the polling station. As



soon as informant reached near the house of the accused person, the person holding firearm fired causing injury to the informant and others. After investigation of the case, the police submitted chargesheet only against accused-Ragho Singh, Krishna Mangal Singh and Anirudh Singh only for offence under Sections 304 I.P.C. The petitioners, though named in the FIR, were not sent up for trial by the police. The cognizance was taken and later on charges were framed against the sent up accused for offence under Section 304 I.P.C. and other sections. After examination of some of the prosecution witnesses, the informant filed a petition under Section 319 Cr.P.C. for summoning of the petitioners to face trial. The prayer was refused by order dated 09.06.2008. The informant challenged the said order before this Court in Cr. Misc. No. 25182 of 2008 and by order dated 27.03.2012, the order dated 09.06.2008 was set aside and the matter was remitted back to the learned Trial Judge to pass fresh order in accordance with law after hearing the parties.

4. Thereafter, the order dated 07.09.2013 was passed in S.Tr. No.65 of 1999 summoning the petitioners under Section 319 Cr.P.C. to face trial for offences under Sections 307,324 and 302 I.P.C. as well as under Sections 3 and 4 of Explosive Substance Act and 27 of Arms Act.



5. The petitioners challenged the aforesaid order in Cr. Misc. No. 49428 of 2013 which was withdrawn on the prayer of the petitioners by order dated 20.08.2014 vide Annexure-4. Thereafter, the petitioners filed a petition before the learned Trial Judge not to frame charge under Section 302 I.P.C. rather to frame charge under Section 304 I.P.C. as done against other accused. The prayer has been refused by the impugned order dated 11.11.2014 mainly for the reason that a criminal court has no power to review its own order dated 07.09.2013, whereby the petitioners were summoned to face trial under Sections 307,324 and 302 I.P.C. as well as under Sections 3 and 4 of Explosive Substance Act and Section 27 of the Arms Act. It is made clear that there is allegation against some of the accused of hurling bomb.

6. Contention of the learned counsel for the petitioners is that some of the co-accused are facing trial for offence under Section 304 I.P.C. and the petitioners have been asked to face trial under Section 302 I.P.C. also besides other sections. Thus in the same trial, anomalous situation would be there.

7. Technically the learned court below might be wrong in its reason that it was going to review its earlier order



dated 07.09.2013 for the reason that sub-section 4 of section 319 Cr.P.C. says that where the court proceeds against the person summoned under sub-section (1) then the proceeding in respect of such person shall commence afresh. Clause (b) of sub-section 4 of Section 319 Cr.P.C. says that subject to the provisions of Clause (a) the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the enquiry or trial was commenced. Therefore, the trial against the petitioners would commence de novo after supply of police papers and framing of the charge. If the learned court below was satisfied on the basis of material discussed above that a case under Section 302 I.P.C. is made out, the court was competent enough to summon the petitioners to face trial under Section 302 I.P.C.also. So far charges against other accused is concerned, Sections 216 Cr.P.C. provides that the charges can be altered or added at any stage before the judgment is pronounced. Therefore, merely for technical reasons that charges against some of the accused has been framed under Section 304 I.P.C. only, it cannot be said that since charges against them cannot be amended, therefore, the petitioners should also be allowed liberty to face trial under Section 304 I.P.C.



8. Therefore, there is no merit in this application.

Accordingly, it stands dismissed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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