

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78292 of 2019

Arising Out of PS. Case No.-184 Year-2016 Thana- SIWAN MUFFASIL District- Siwan

MD. AIN @ MOHAMMED AIN Son of Ali Hasan Resident of Village -
Orma, P.S.- Siwan (Mufassil), Distt.- Siwan.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Zeyaul Hoda
For the Opposite Party/s	:	Mr. Ajit Kumar
For Informant	:	Mr. Manish Kumar Singh.

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 10-01-2020 This application has been filed against the order dated 07.11.2019 passed by the learned Sessions Judge, Siwan in Sessions Trial No. 172/2018 (arising out of Muffasil P.S. Case No. 184/2016), whereby and where under, the learned Sessions Judge has issued summons to the petitioner to appear before the learned Trial Court for Trial under Section 319 of the Cr.P.C.

Prosecution case is that an F.I.R. has been lodged under Sections 147, 148, 149, 323, 324, 307 and 427 of the Indian Penal Code by the informant Brij Mohan Pandey, naming the eight accused persons. Initially, the petitioner was not named in the F.I.R, however, later on protest petition filed by the informant naming the petitioner also. It further appears that



charge-sheet has been submitted against only eight accused persons named in the F.I.R. and not against the petitioner. Cognizance of the offence was taken and the case was committed to the court of Sessions. It further appears that after examination of five witnesses, learned Sessions Judge vide impugned order dated 07.11.2019 ordered for issuance of summons against the petitioner for facing the trial along with other accused persons.

The said order has been challenged by the petitioner by way of present quashing application.

Submission of learned counsel for the petitioner is that petitioner was not named in the F.I.R. nor any witness in their statement under Section 161 Cr.P.C. has named the petitioner, however, the learned Sessions Judge in a very mechanical manner has ordered for issuance of summons against the petitioner under Section 319 Cr.P.C., which is not sustainable in the eye of law.

On the other hand, learned counsel appearing for the informant, who has appeared suo motu has submitted that the impugned order, itself shows that during trial, five and witnesses have been examined and they have named the petitioner and impugned order further discloses that evidence



came into light during trial shows the active involvement of the petitioner in the offence and the witnesses have also been cross – examined. By showing the certified copy of evidence of PW1 and PW2, it has been submitted that petitioner has been named in examination in chief, showing his active involvement showing allegation that as per his order injured was assaulted and both P.W. 1 and P.W.2 were examined by the defence and the Trial Court after considering the materials against the petitioner, has ordered for issuance of summons against the petitioner, which is just and proper.

Heard both sides and considered the materials available on record, which shows that there are evidence against the petitioner, which makes out a prima facie case against the petitioner and, therefore, I do not find any illegality or impropriety in the order dated 07.11.2019 passed by the learned Sessions Judge, Siwan in Sessions Trial No. 172/2018 (arising out of Muffasil P.S. Case No. 184/2016).

This application is accordingly dismissed.

(Vinod Kumar Sinha, J)

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