

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16457 of 2021

Arising Out of PS. Case No.-363 Year-2017 Thana- JOGAPATTI District- West Champaran

SANGITA DEVI @ SANGITA KUMARI W/o Late Munna Kumar Yadav @
Munna Yadav R/o village- Chandraha Rupwalia (Kachahari Tola), P.S.-
Yogapatti, District- West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Duryodhan Yadav S/o Julum Yadav R/o village- Nimuhia, P.S.- Nawalpur,
District- West Champaran
3. Pawan Prasad S/o Salahant Prasad R/o village- Nawalpur, P.S.- Nawalpur,
District- West Champaran
4. Reema Kumari D/o Jagan Yadav R/o village- Nimuhia, P.S.- Nawalpur,
District- West Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ramchandra Sahni, Adv.
For the Opposite Party/s : Mr. A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 05-05-2022 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

This application under Section 482 of the Cr.P.C. has
been filed for quashing the order dated 29.11.2019 passed by the
learned Additional Sessions Judge-2nd, West Champaran by
which the application filed under Section 319 of the Cr.P.C. by the
State has been rejected.

On the basis of a statement made by the informant
with respect to missing of her husband, an F.I.R. being Yogapatti
(Nawalpur) P.S. Case No. 363 of 2017 has been instituted and the
police has followed the routine investigation of the case and



submitted charge-sheet against four accused persons vide Charge sheet No. 141 of 2017 under Sections 302, 201, 404, 467, 468, 471 and 120(B) of the Indian Penal Code. Accordingly, charge framed against the accused and trial proceeded.

During course of trial, the State has filed an application under Section 319 of the Cr.P.C. for summoning the accused persons, namely, Duryodhan Yadav, Pawan Prasad, Ajit Pandit and Rima Kumari on the basis of the material witnesses examined during course of trial which stood dismissed and the same is under challenge.

Section 319 of the Cr.P.C. is required to be reproduced for better adjudication of the case, which reads as under;

“319. Power to proceed against other persons appearing to be guilty of offence.

1. Where, in the course of any inquiry into, or trial of, an offence, it appears 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, the Court may proceed against such person for the offence which he appears to have committed.

2. Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

3. Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

4. Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard;

(b) 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 inquiry or trial was commenced.”

On a plain reading of sub-section (1) of Section 319, there can be no doubt that it must appear from the evidence tendered in the course of any inquiry or trial that any person not being the accused has committed any offence for which he could be tried together with the accused. This power under Section 319(1) can be exercised only if it so appears from the evidence at the trial and not otherwise. Therefore, this sub-section contemplates existence of some evidence appearing in the course of trial wherefrom the court can *prima facie* conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named by the police.

I have heard the respective parties and gone through the materials available on record. Here, in case at hands, the learned Sessions Judge has observed that altogether six witnesses have been examined and all the witnesses have stated on the basis of confessional statement of the accused made before the police. None of the witnesses have claims to be the eye witness of the alleged occurrence and the learned Sessions Judge has found material contradictions in the depositions of the witnesses and also found that no any substantive piece of



evidence has surfaced in the statement of the witnesses during trial which attracts the exercise of powers of Section 319 of the Cr.P.C. warranting summons to the opposite party Nos. 2 to 4 in this case. Therefore, in my view, *stricto sensu*, Section 319 of the Code cannot be invoked in a case like the present one where no substantive evidence has been led at trial wherefrom it can be said that the opposite party Nos. 2 to 4 appear to have been involved in the commission of the crime along with those already sent up for trial by the prosecution.

In such view of the matter, this Court is of view that the learned court below has rightly observed and pointed out the lacunas and has rightly passed the impugned order rejected the application filed under Section 319 Cr.P.C. and the same does not warrant any interference of this Court in exercise of powers conferred under Section 482 of the Cr.P.C.

Accordingly, this criminal miscellaneous application is dismissed.

(Rajesh Kumar Verma, J)

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