

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30683 of 2025

In
CRIMINAL MISCELLANEOUS No.48700 of 2021

Arising Out of PS. Case No.-136 Year-2017 Thana- SIMRI District- Buxar

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1. Awadhesh Kunwar @ Awadhesh Kumar Son of late bodhi Kunwar Resident of village- Dumri, Ps- Simri, Dist- Buxar
 2. Nirbhay Kumar @ Nirbhay Kunwar son of Shri Awadhesh Kumar Resident of village- Dumri, Ps- Simri, Dist- Buxar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shailendra Kumar Choubey
For the Opposite Party/s : Mr.Meena Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 20-06-2025

Ref:- Cr. Misc. No. 30683 of 2025

Heard the parties.

2. The present restoration application has been filed for restoration of Cr. Misc. No. 48700 of 2021 to its original file, which was dismissed on 20.03.2025 for non-prosecution.

3. For the reasons mentioned in the restoration petition, the present restoration petition is allowed and Cr. Misc. No. 48700 of 2021 is restored to its original file.

Ref:- Cr. Misc. No. 48700 of 2021

4. Heard the learned counsel for the parties.

5. This is an application for setting aside the impugned order dated 02.03.2020 passed by the learned



Additional Sessions Judge-III, Buxar by which petition under Section 319 Cr.P.C. filed on behalf of the prosecution with a prayer to summon the petitioners and to face trial, been allowed in a most arbitrary and absolute manner.

6. By the impugned order, the petitioners have been summoned by the Trial court to face trial on the basis of evidence led before the Trial Judge.

7. Section 319 of the Cr.P.C., reads as under for a ready reference:

“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 subsection (1) then –

(a) the proceeding in respect of such person shall be commenced afresh, and the witnesses re-heard;

(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.”

8. It would be apposite to produce para 16 and 17 of ***Yadwinder Singh Vs. Lakhi alias Lakhwinder Singh and Anr.,*** 2025 SCC Online SC 686 which reads as under:

“16. The law contemplates and provides for a different outcome under Section 319 of the Code, dependent on the peculiar factual premises of a case. Juxtaposition of the law with the instant factual backdrop reveals as under : It is true that the SIT found no evidence against the private respondents, however such factum by itself puts no fetters on the powers bestowed under Section 319 of the Code. Moreover, eye-witnesses in the Trial Court have named the private respondents as persons present on the site of occurrence. The hardship, were we to adjudge it at this juncture, could be more if the private respondents are not summoned than opposed to if they are.

17. Be it noted, the private respondents will have all defences open to them before the Trial Court to put forth their version of innocence,



including by way of resort to cross-examination. Trial being an exercise to unravel the truth, given the depositions before the Trial Court, to absolve the private respondents based on the SIT's findings alone, to our mind, may not be in the best interests of justice. Indubitably, while an innocent person should not be punished, no guilty person should go scot-free. The Trial Court could have better worded its order through clearer reasoning. Reproduction of a passage from Ramkrishna Forgings Limited v. Ravindra Loonkar, (2024) 2 SCC 122 is apt:

'39. In the recent past, from Kranti Associates (P) Ltd. v. Masood Ahmed Khan [Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] to Manoj Kumar Khokhar v. State of Rajasthan [Manoj Kumar Khokhar v. State of Rajasthan, (2022) 3 SCC 501 : (2022) 2 SCC (Cri) 1], the clear position in law is that a court or even a quasi-judicial authority has a duty to record reasons for its decision. Needless to add, "Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless." [Raj Kishore Jha v. State of Bihar; (2003) 11 SCC 519 : 2004 SCC (Cri) 212]..."

7. I have gone through the records of the case. The impugned order has considered the statements and materials available on record and therefore, in view of the law laid down



by the Hon’ble Supreme Court in the case of *Yadwinder Singh (supra)*, the defence of alibi at this stage cannot be considered and therefore, this is not a fit case for interference.

8. Accordingly, this application is dismissed.

9. All the grounds taken by the petitioner shall be considered by the Trial Judge during the course of the trial.

(Sandeep Kumar, J)

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