

Ramayan Tiwari. Vs. State of Bihar.

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Court : Patna

Decided On : Aug-24-2010

Judge : Akhilesh Chandra, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482, 319, 161; Indian Penal Code (IPC) - Sections 147, 148, 149, 323, 324, 307, 302

Appeal No. : CRIMINAL MISCELLANIOUS No.21132 OF 2005

Appellant : Ramayan Tiwari.

Respondent : State of Bihar.

Advocate for Def. : Mr. Damodar Pd. Tiwary, Adv.

Advocate for Pet/Ap. : M/s Krishna Pd. Singh; Meena Singh; Manish Kumar, Adv.

Judgement :

1. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.
2. This is an application under section 482 of the Code of Criminal Procedure seeking quashing of order dated 21.5.2005 passed by Additional Sessions Judge, Fast Track Court no.3, Rohtas, Sasaram, in Sessions Trial no. 290 of 2002 exercising powers under section 319 of the Code of Criminal Procedure summoning the petitioner to face trial.

3. Admittedly, one Chenari P.S. Case no. 44 of 2000 under Sections 147, 148, 149, 323, 324, 307 and 302 of the Indian Penal Code was instituted at the instance of one Anil Tiwary against thirteen persons including the petitioner who alone, after investigation, was exonerated by the Police who submitted charge sheet against twelve accused persons. Accordingly, cognizance was taken and after commitment the trial commenced wherein two witnesses Siddhu Tiwary and Ram Dulari Devi were examined. Prayer on behalf of the informant was made to add the petitioner as one of the accused. After hearing, court below allowed the prayer giving reason to file the instant case.

4. Witness no.1 examined on behalf of the prosecution in trial though has named the petitioner stating his involvement at initiation of occurrence but cross-examination of this witness was deferred on 22.11.2004 since thereafter he did not turn up for cross- examination. No doubt, there is nothing on record to show what happened thereafter but, prima facie, the evidence is not complete. Moreover, in paragraph 1 of his statement the witness has stated contrary to the prosecution case that petitioner and three others were digging the field containing paddy plants and there is nothing more against the petitioner. Another witness Ram Dulari Devi, who is none else than mother of P.W.1 likewise her son stated same thing in paragraph 1 contrary to the prosecution case and during cross- examination paragraph 49 it appears that perhaps in her statement under Section 161 of the Code of Criminal Procedure she had not named the petitioner besides a few more that it appears that she has denied the suggestion. But, again this much can be said that except initial presence of the petitioner she has said nothing against him.

5. On face of above materials learned Additional Public Prosecutor also fairly concedes that this case stands squarely covered on the decision of the Apex Court on the similar point in the case of Brinda Band Das & Others V. State of West Bengal; 2009(2) BBCJ IV-90 wherein in paragraph 19 it has been held : "The fulcrum on which the invocation of Section 319 Cr.P.C. rests is whether the summoning of persons other than the named accused would make such a difference to the prosecution as would enable it not only to prove its case but to also secure the conviction of the persons summoned."

The learned Additional Public Prosecutor further concedes that there is absolutely nothing to support the impugned order which fail to prove the test as prescribed above.

6. Accordingly, the impugned order is quashed the application stands allowed.

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