IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46244 of 2016

Arising Out of PS. Case No.-247 Year-2009 Thana- PALIGANJ District- Patna

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1. Shankar Yadav Son of Tatar Yadav Resident of Village - Gauari, P.S. - Sigaurhi, District - Patna
2. Anita Devi Wife of Shankar Yadav Resident of Village - Gauari, P.S. - Sigaurhi, District - Patna
3. Nathuni Yadav Son of Late Jangli Yadav Resident of Village - Bahadurpur, P.S. - Paliganj, District - Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Sudeshwar Yadav Son of Late Bhuneshwar Yadav Resident of Village - Gauari, P.S. - Sigaurhi, District - Patna

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Dhirendra Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
C.A.V. JUDGMENT
Date : 07-08-2026

The present application has been preferred under Section 482 of the Code of Criminal Procedure, 1973, (*in short the **"Cr.P.C."**),* assailing the order dated 25.07.2016 passed by the learned Additional District and Sessions Judge-III, Danapur, Patna in connection with Sessions Trial No. 369/11/Trial No. 243/15, arsing out of Paliganj P.S. Case No. 247/09, whereby the petitioner Nos. 1, 2 and 3, namely, Shankar Yadav, Anita Devi and Nathuni Yadav have been summoned to face the trial.

2. On 27.11.2009, an F.I.R. bearing Paliganj P.S. Case No. 247/09 has been instituted under Sections 302, 328 and 34

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of the Indian Penal Code, arraying Ranju Kumari (wife); Sita Sundri Devi (mother-in-law); Shankar Yadav (brother-in-law/*sadhu)* and Anita Devi (sister-in-law/*sali)*. After investigation, police commenced the investigation and after completion of the investigation, charge-sheet was submitted on 11.10.2010 *vide* charge-sheet No. 224/10 against Ranju Kumari (wife) and Sita Sundri Devi (mother-in-law) and the remaining two accused persons, namely, Shankar Yadav and Anita Devi (the petitioners herein) were not sent up for trial for want of evidence against them. The learned Additional Chief Judicial Magistrate took cognizance of offences against two charge-sheeted accused persons while accepting the final form with respect to Shankar Yadav and Anita Devi, whereafter the case was committed to the Court of learned Sessions Judge for trial and, accordingly, charges were framed and trial commenced.

3. In course of trial, altogether five prosecution witnesses were examined on behalf of the prosecution, namely, Shyam Sundar Devi (PW-1); Vimal Kumar (PW-2); Yogeshwar Yadav (PW-3); Phuleshwari Devi (PW-4) and Sudeshwar Yadav (PW-5), who is the informant of this case, and after having heard all the concerned parties, the learned Court fixed 25.07.2016 as the date for pronouncement of judgment, but

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on that very date, after having examined and appreciated the evidence of all the prosecution witnesses, the learned A.D.J.-III, Danapur, Patna came to the conclusion that on the basis of the deposition of the aforesaid witnesses, a strong *prima-facie* case is made out against Nathuni Yadav, Shankar Yadav and Anita Devi, the petitioners herein, besides the accused persons, namely, Ranju Devi and Sita Sundri Devi, who were already facing trial. So, for the ends of justice, summons were issued under Section 319 of the Cr.P.C. to the accused persons/petitioners to appear before the Court to face the trial along with the other accused persons who were already facing trial.

4. The order summoning the petitioners herein, by virtue of application of Section 319 of the Cr.P.C. to face trial along with the other accused persons, has been assailed before this Court by filing the instant application under 482 of the Cr.P.C.

5. Learned counsel for the petitioners submits that petitioner Nos. 1 and 2, though named in the F.I.R., but, after investigation, the police submitted final form against them as there was no evidence, at all, connecting them with the alleged crime where the son of the informant is alleged to have been

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killed by administering poison. He also submits that the learned Additional Chief Judicial Magistrate, after having perused the materials available on record and the evidences collected in course of the investigation, accepted the final form against petitioner Nos. 1 and 2 and, accordingly, they were discharged from the case. He further points out that petitioner No. 3 was neither named in the F.I.R. nor is there any allegation against him, more so in the nature of implicating him with the death of the son of the informant. In course of investigation, no evidence, at all, has been found with respect to participation of petitioner No. 3 in the alleged crime. Without there being any evidence and without any plausible reason thereof, the petitioner No. 3 has been summoned as an additional accused in the case by the learned A.D.J.-III, Danapur, Patna to face the trial, which is bad in law and as such, the summoning order is fit to be set aside.

6. *Vide* order dated 04.07.2024., the informant was added as O.P. No. 2 by this Court and, accordingly, notices were issued to him and, at the same time, this Court has stayed the further proceeding in connection with Sessions Trial No. 369 of 2011/ Trial No. 243 of 2015 pending before the learned Court of A.D.J.-III, Danapur, Patna.

7. From the order dated 26.06.2024, it appears that

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notice so issued to O.P. No. 2, *i.e.*, the informant has been received by his daughter-in-law, whereafter the Court directed the learned counsel for the petitioners to file an application with respect to the jointness of the daughter-in-law and the informant of the case. Accordingly, an application, on affidavit, with respect to the jointness of the parties was filed, which is evident from the order dated 22.07.2024 and thus, this Court held the service of notice upon O.P. No. 2 to be satisfactory and, accordingly, the matter was listed under the heading "For Admission" for hearing and disposal.

8. On 22.07.2026, when the matter was taken up for hearing to be heard finally, in spite of repeated calls, none appears on behalf of the O.P. No. 2 to present his case.

9. Learned Additional Public Prosecutor appearing on behalf of the State submits that the learned counsel for the petitioners is not stating the correct fact, which is emerging in the case. He points out that *vide* order impugned in the present petition, the learned Trial Court has issued summons to the petitioners seeking their appearance to face the trial on the basis of the evidence which has come after examination of PW-1, PW-2, PW-3, PW-4 and PW-5, wherein, specific accusations against the petitioners have been made and then finding

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substance in the deposition and on that very basis finding strong case more than *prima-facie*, the learned trial Judge passed the order impugned, summoning the accused persons (the petitioners herein) to face the trial along with the other two accused persons, who were already facing trial. He also points out that Nathuni Yadav, *i.e.,* petitioner No. 3 is none else than the husband of accused/Sita Sundri Devi (mother-in-law), who is already facing trial with Ranju Devi, who is the wife of the deceased. Hence, the learned Additional Public Prosecutor submits that there is strong *prima-facie* case and sufficient evidence which has come after examination of all the prosecution witnesses, which justifies the summoning of the accused persons, *i.e.*, the petitioners herein, to face the trial along with the two accused persons who are already facing trial.

10. Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor for the State and perused the documents brought on record besides the order dated 25.07.2016, succinctly discussing the evidence of all the prosecution witnesses produced on behalf of the prosecution and examined in course of trial.

11. At this stage, the definition and ingredients of Section 319 of the Cr.P.C. assumes importance and as such, it is

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pertinent to quote Section 319 of the Cr.P.C. in order to have proper appreciation of the matter at hand.

12. Section 319 of the Cr.P.C. reads as hereunder:

> *"**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 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."*

13. The very object of this provision as contained under Section 319 of the Cr.P.C. is based on the premise that real culprit should not get away unpunished and as such, the power has been vested in the Court to proceed under Section 319 of the Cr.P.C. to summon those persons who are not facing trial before the Court, in case any substantial evidence brought against them in course of trial justifying their summoning to

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face the trial along with the other accused persons who were already facing trial. Section 319 of the Cr.P.C. emanates from the doctrine: *"Judex Damnatur Cum Nocens Absolvitur"* which means *"Judge is condemned when the guilty is acquitted"*.

(emphasis supplied)

14. Thus, this *doctrine* acts as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 of the Cr.P.C.

15. It is the duty of the Court to do justice by punishing the real culprit, which is the solemn object and soul of Section 319 of the Cr.P.C., where the investigating agency for any reason does not array any of the real culprits as an accused, the Court is not powerless in calling the said accused to face trial. The question remains, under what circumstances and at what stage should the Court exercise its power as contemplated in Section 319 of the Cr.P.C.?

16. The principles on which the power under Section 319 of the Cr.P.C can be invoked have been dealt with by this Court in the case of ***Brijendra Singh & Ors. v. State of Rajasthan***, reported in ***(2017) 7 SCC*** **706**, wherein it has been held as follows:-

> ***"10.*** *It also goes without saying that Section 319 CrPC, which is an enabling provision empowering the Court to take appropriate steps for*

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> *proceeding against any person, not being an accused,* ***can be exercised at any time after the charge-sheet is filed and before the pronouncement of the judgment, except during the stage of Sections 207/208 CrPC, the committal, etc. which is only a pre-trial stage intended to put the process into motion."***
>
> *"**13.** In order to answer the question, some of the principles enunciated in Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92: (2014) 2 SCC (Cri) 86] may be recapitulated: power under Section 319 CrPC can be exercised by the trial court at any stage during the trial i.e. before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some "evidence" against such a person on the basis of which evidence it can be gathered that he appears to be guilty of the offence. The "evidence" herein means the material that is brought before the court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the court under Section 319 CrPC and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity."*

17. Thus, from the aforesaid discussion, it is, indisputably evinced that the Court is the sole repository of justice and duty is cast upon it to uphold the rule of law and therefore, it will be inappropriate to deny the existence of such

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powers with the Court in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigation or the prosecuting agency. The desire to avoid the trial is so strong that an accused makes all out efforts at times to get himself absolved even at the stage of investigation or enquiry, even though he may be connected with the commission of the offence. The constitutional validity and contours of Section 319 of the Cr.P.C. have been authoritatively expounded by a Constitution Bench of this Court in case of ***Hardeep Singh v. State of Punjab & Ors.***, reported in ***(2014) 3 SCC 92*** in the following words:-

> *"**8.** The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to the society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished."*

18. Thus, what culled out from the aforesaid

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discussions made in the preceding paragraphs with respect to the scope, ambit and parameters within which the powers conferred under Section 319 of the Cr.P.C., could be summed up as follows:-

> *"The Trial Court has power, under Section 319 of the Cr.P.C., to summon and proceed against any person including a person;-*
> *(i) not named in the F.I.R.;*
> *(ii) a person though named in the F.I.R., but has not been charge-sheeted; and*
> *(iii) a person who has been discharged, if from the evidence in course of an enquiry or trial, it appears that such person can be tried along with the accused already facing trial."*

19. Pertinently, in addition to the aforesaid categories, the ambit of Section 319 of the Cr.P.C. even extends to persons against whom criminal proceeding had earlier been quashed, as has been observed in the case of ***Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors.***, reported in ***(1983) 1 SCC 1***. Applying the aforesaid principles as laid down here-in-above, the authoritative judicial pronouncements as well as the statutory provisions, which is now law of the land in the present case, could be examined, analyzed and discussed.

20. The petitioner Nos. 1 and 2 though named in the FIR but have been exonerated by the police after investigation in the form of final report which were duly accepted by the Court and furthermore, the petitioner No. 3 who was neither named in the FIR nor has been under any kind of

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investigation in the present matter, was summoned by the Court by the learned Trial Judge, *i.e.*, learned ADJ-III, Danapur, Patna *vide* order dated 25.07.2016 to face the trial along with the two accused persons besides Ranju Devi and Sita Sundri Devi, who were already facing trial, on the basis of the deposition of PW-1, PW-2, PW-3, PW-4 and PW-5.

21. PW-1/Shyam Sundar Devi, PW-2/Vimal Kumar, PW-3/Yogeshwar Yadav, P-W4/Phuleshwari Devi (mother of the deceased) and PW-5 Phuleshwar Yadav (father of the deceased and the informant of this case) in their examination-in-chief has categorically and specifically alleged that the accused persons, namely, Ranju Devi, Sita Sundri Devi, Nathuni Yadav, Sanju Devi, Shankar Yadav and Anita Devi killed Phulendra (deceased) by giving poison to him. The occurrence had taken place in the *Sasural* of the deceased. Further, from Exhibit No.-7, which is the *viscera* report of the deceased, shows the cause of death of the deceased, namely, Phulendra by poison. The aforesaid statement of the witnesses, on oath, in course of examination-in-chief has been corroborated, substantiated and supported by the *viscera* report, which has already been exhibited in course of trial as Exhibit No.-7. These evidence read, evaluated and appreciated together,

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does not leave an iota of doubt with respect to the culpability of the petitioners regarding their participation in the alleged crime. The learned Sessions Judge *vide* order impugned has properly appreciated the evidence of the prosecution witnesses along with the *viscera* report and has rightly summoned the petitioners under Section 319 of the Cr.P.C. to face trial.

22. This Court finds no illegality in the order dated 25.07.2016 passed by the learned ADJ-III, Danapur, Patna in connection with Sessions Trial No. 369 of 2011/Tr. No. 243 of 2015 and as such, the instant application preferred against the order dated 25.07.2016 is, hereby, dismissed with a direction to the learned Trial Court to proceed with the trial in right earnest without granting unnecessary adjournments since the matter has been pending for over a decade. It is also made clear that the Trial Court will not grant unnecessary adjournment in the matter and will ensure the appearance of all the accused persons facing trial on each and every date in order to facilitate the conclusion of the trial at the earliest.

23. The Court generally does not fix a time for the learned Trial Court to conclude the trial, but in the present case, it seems expedient, in the interest of justice, to direct the learned Trial Court, *i.e.*, learned ADJ-III, Danapur, Patna to

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conclude the trial within a period of six months, preferably conducting the trial on day-to-day basis without granting unnecessary adjournment in the matter.

24. The application is, accordingly, dismissed.

25. There is, however, no order as to cost.

26. Interlocutory application(s), if any, also stands disposed off accordingly.

(Rana Vikram Singh, J)

Smriti/
Rakesh/-

AFR/NAFR	AFR
CAV DATE	22.07.2026
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