

**(2007) 01 PAT CK 0180**

**Patna High Court**

**Case No:** Criminal Miscellaneous No. 25888 of 2005

Anil Kumar Swarnkar and  
Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

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**Date of Decision:** Jan. 22, 2007

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 164, 319, 482
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2007) 2 PLJR 340

**Hon'ble Judges:** Abhijit Sinha, J

**Bench:** Single Bench

**Advocate:** Kanhaiya Prasad Singh, for the Appellant; J. Upadhaya, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Abhijit Sinha, J.

This application by the two petitioners herein is directed against the order dated 12.5.2005 passed by the learned 1st Additional Sessions Judge, Madhepura, in Sessions Trial No. 35/2003, arising out of Singheshwar P.S. Case No. 91/97, whereby the two petitioners herein along with another have been summoned u/s 319 Cr.P.C. to face the trial even as the trial as against the principal accused, Janardan Bhagat, was dropped by reason of his death. The Singheshwar P.S. Case is based on the fardbeyan given by one Prabhu Bhagat at about 8.45 A.M. on 19.8.97 in connection with the all alleged murder of his 18 years old son Sudhir Bhagat. It was given on the roof of the house of his brother Janardan Bhagat where the dead body of Sudhir lay. According to the informant, he had come to the village some two years back and was living with his son and married daughter in a rented house near the house of his brother Janardan. It is said that his son had worked in the rice shop of Janardan

Bhagat for about a year and half, he left the job as he was not paid any wages and was provided with food and "nashta" only. He then joined the shop of Bishundeo Bhagat which he left after working for seven days and was presently unemployed. It is said that on 18.7.1997, the deceased got "rakhi" tied by his cousins i.e. the daughters of Janardan Bhagat, he then went to his sister at Saharsa, returned by evening and then went to Singheshwar Temple to attend the "Shringar" and "Katha" and from there he went to the house of Janardan at about 10.30 P.M. where he ate his food and then slept on the roof of the house. The next morning Sudhir was found dead by Poonam Devi, the informant's daughter, when she went to wake up her brother. There were multiple injuries on his body as also sign of throttling. The informant claimed that some unknown persons for unknown reasons had killed Sudhir.

2. Accordingly Singheshwar P.S. Case was registered u/s 302 I.P.C. against unknown and in course of investigation the police recorded the further statement of the informant as also the statements of Janardan Bhagat, his wife Raj Kumari Devi, daughter Ritu Kumari and many other independent witnesses but no clear picture emerged about the killer nor anyone claimed to have seen the occurrence. It also transpired there from that the deceased had no love affairs with any of the village belles or with Anju Kumari, the daughter of Anant Swarnakar and that the deceased had no enmity with anyone except the strained and bitter relationship with his uncle Janardan Bhagat which was duly admitted by the uncle in his statement under 161 Cr.P.C. and in the further statement of the informant. None claimed to have heard or seen anything abnormal on the fateful night on the roof of Janardan's house. However, one Phuleshwar Mehta claimed to have heard the voice of the deceased coming from the roof of Janardan's house at around 11-12 P.M. while he was returning to his shop from the temple and what he heard was of the deceased pleading with his uncle to let him free and that he would not repeat such things in the future. It further transpires that the informant and his brother Janardan got their statement u/s 164 Cr.P.C. recorded on 3.10.1997 and that of daughter Ritu Kumari on 4.10.1997 and herein a story of the love affair between the deceased and Anju Kumari was developed for the first time and it was also given out that Anju's father Anant Swarnkar had threatened to kill the deceased if he met Anju again. However, as nothing substantial was found in this newly propounded story and the needle of suspicion swung towards Janardan who was arrested and a charge-sheet was submitted against him.

3. It appears that at the trial five witnesses were examined including the informant, (P.W. 2), Raj Kumari Devi (P.W. 1) Phuleshwar Mehta (P.W. 3) and two others wherein P.Ws. 1 and 2 expressed their suspicion on Anant Swarnkar and the two petitioners herein but the same was not supported by the other three. The story of deceased's love affair with Anju was also not supported by the three witnesses. Accordingly, the informant filed a petition u/s 319 Cr.P.C. praying therein to summon the two petitioners herein and their father as additional accused to face the trial. The

prosecution filed a rejoinder thereto praying to reject the petition filed by the informant on the ground that there was nothing on record to connect the three with the crime. However, the petition of the prosecution did not find favour with the court who by the impugned order has summoned the three to face trial.

4. It has been submitted on behalf of the petitioners that they are innocent and are being dragged into this case falsely and by way of an after thought with the informant brother having a change of heart subsequently -so far as his accused brother Janardan is concerned. It has also been submitted that from the materials available in the records there is nothing against the accused who are proposed to be added except the three statements u/s 164 Cr.P.C. and the deposition of P.Ws. 1 and 2 in court. So far as the statements u/s 164 Cr.P.C. are concerned they were recorded after two months of the fardbeyan and the informant Janardan and his daughter Ritu Kumari never divulged the fact of the alleged love affair in their statement u/s 164 Cr.P.C.

5. It is by now well settled that while exercising powers u/s 482 Cr.P.C. the only requirement is to see whether continuance of the proceeding would be an abuse of judicial process. It is settled principle of law that to exercise powers u/s 482 Cr.P.C. the High Court at that stage has no authority or jurisdiction to go into the matter and examine its correctness and the High Court should be loath in substituting its own view of matter with view taken by the court below unless the only irresistible conclusion from facts and law dictates that the view taken by court below is patently perverse. That is not the situation here. The trial court has given cogent reasons whether the belated statement u/s 164 Cr.P.C. will have an adverse effect on the trial has to be adjudged by the trial court and I cannot compel myself to interfere with the impugned order. Accordingly, I find no merit in this application which is dismissed.