

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 33345 of 2012

Arising Out of PS.Case No. -82 Year- 2006 Thana -Udakishunganj District- MADHEPURA

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Sunita Jha, Wife of Madhwendra Jha, Resident of Majharpatti, P.S.-
Udakishunganj, District – Madhepura.

.... Petitioner

Versus

1. The State of Bihar.
2. Professor Bipin Kumar Mishra, Son of Sri Suresh Hazari, Resident of Village
and Post – Kursandi, P.S.- Purain, District – Madhepura.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Atul Chandra

For the Informant : Mr. Arbind Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 01-04-2015

Heard Sri Atul Chandra, learned counsel for the petitioner
and Sri Arbind Kumar, learned counsel, who appeared on behalf of
informant.

The petitioner, though was not having any locus in a
criminal case in which police after investigation submitted charge-
sheet against some of the accused persons for the offence under
Sections 143, 457, 380 of the Indian Penal Code, has approached this
Court invoking its inherent jurisdiction under Section 482 of the Code
of Criminal Procedure, without impleading accused persons as party,
with a prayer for quashing of an order dated 20-06-2012 passed by Sri
Avinash Kumar, learned Judicial Magistrate 1st Class, Madhepura
(hereinafter referred to as the “Magistrate”). By the said order, the
learned Magistrate on the prayer made by the prosecution/informant



for closing evidence has closed the prosecution case and fix the case for recording statement of accused persons under Section 313 of the Cr.P.C. At the same time, the learned Magistrate had not allowed the petitioner and some other persons to be examined as prosecution witness. In sum & substance, it has been alleged that the learned Magistrate virtually has passed an order which is contrary to the earlier order passed by his predecessor i.e. order dated 21-12-2010 (Annexure '4' to the present petition).

Sri Chandra, learned counsel for the petitioner assailing the impugned order submits that after submission of charge-sheet and while prosecution evidence was going on, the petitioner, who was Secretary of concerned college filed an application before the trial court for being examined as prosecution witness. Besides petitioner, the prayer was made to examine other official member of the concerned college to be examined as prosecution witness. Surprisingly, the learned Magistrate by its order dated 21-12-2010 allowed the petition filed by the petitioner and observed that petitioner and other officials of the concerned college shall be examined after examination of non-official charge-sheeted witnesses. It has been argued that once the learned Magistrate had allowed the prayer of the petitioner for being examined as prosecution witness, at subsequent stage, the successor Magistrate was not having any authority or



jurisdiction to pass order contrary to the order passed by the trial court. He submits that this amounts to review/recall of its earlier order, which is not permissible under Section 362 of the Cr.P.C. He submits that though, the order was passed long back in the year 2010, neither the informant, who is opposite party no. 2, nor any of the accused persons challenged the said order before the superior court and as such, the earlier order of the Magistrate had attained its finality. According to learned counsel for the petitioner, the earlier order passed by the predecessor of the present Magistrate was having binding effect. In support of his argument, learned counsel for the petitioner has placed heavy reliance on a judgment of the Apex Court reported in **2012 (1) P.L.J.R. (S.C.) 197 (State of Punjab –Vs.- Davinder Pal Singh Bhullar & Ors.)**. He has specifically placed reliance on paragraphs 26, 27 & 28 of the judgment and submits that order impugned is liable to be set aside.

Learned counsel for the informant opposing the prayer of the petitioner submits that the petitioner in a calculated manner had earlier filed the petition for being examined as prosecution witness. He submits that during investigation, neither statement of petitioner was recorded under Section 161 of the Cr.P.C. nor the petitioner was cited as a witness by the investigating officer. He submits that it appears that only with a view to indirectly help the accused persons,



such petition was filed by the petitioner and the learned Magistrate contrary to the provisions contained in the Cr.P.C. had entertained the petition filed by the petitioner and allowed the same on 21-12-2010. He submits that ofcourse said order was not challenged by the informant, but fact remains that the order earlier passed by the learned Magistrate itself was without jurisdiction and contrary to the procedure established by the Code of Criminal Procedure. He submits that after the most of the charge-sheeted witnesses were examined, the petition was filed by the prosecution/informant for closing the evidence, which has been accepted by the learned Magistrate and case was fixed for recording statement of the accused persons. Accordingly, it has been prayed to reject the present petition.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. At the very outset, I must agree with the submission made by the learned counsel for the petitioner that the successor Magistrate was not correct in ignoring the earlier order passed by his predecessor Magistrate. This can be treated as review of the earlier order which is barred by Section 362 of the Code of Criminal Procedure, but since now the matter has been brought to the notice of this Court, this Court while exercising power under Section 482 of the Code of Criminal Procedure, for the ends of justice is competent to examine the correctness of the order, which



was passed earlier by the learned Magistrate. I have examined the order dated 21-12-2010 passed by the earlier Magistrate in the present case, whereby, he had entertained the petition filed by the petitioner, who was obviously a stranger to the present case. It is not in dispute that the petitioner was not examined by the police nor she was cited as chargesheeted witness. Once the petitioner was not having any locus, the learned Magistrate had earlier committed serious error in entertaining such petition and directing for allowing such persons to be examined as prosecution witness, that too without the consent of the prosecution. Normally, in a criminal prosecution, charge-sheeted witnesses are examined first and if the prosecution proposes to examine any other witness that can be done, but at the same time, a stranger may not be allowed to be examined as a witness unless it is supported by the prosecution. Moreover, the case was initiated earlier by the prosecution and prosecution after examination of certain witnesses had filed the petition for closing the prosecution evidence, which was rightly accepted by the learned Magistrate by order dated 20-06-2012, however same has been challenged in the present case. It is further evident that after closer of the prosecution evidence, the case was fixed for recording statement of accused under Section 313 of the Cr.P.C. Accordingly, once during the trial such development had already taken place the petitioner was not justified in approaching this

Court with a prayer to quash the order of the learned Magistrate without impleading any of the accused persons, who are facing trial. In this view of the matter, this petition is fit to be rejected. Moreover, the order impugned may have error to the extent that the learned Magistrate had ignored the order of earlier Magistrate, but this defect is removed at the level of this Court and this Court observes that earlier order passed by the learned Magistrate i.e. order dated 21-12-2010 was itself illegal and without jurisdiction and as such, I do not find any error in the order impugned, save & except, to clarify that once an order is passed by the same court, at subsequent stage, save & except certain special circumstances, same may not be altered by the same court. Further, there is no dispute regarding the proposition of law as laid down by the Hon'ble Apex Court in ***Davinder Pal Singh Bhullar's case (supra)***. It further appears that F.I.R. in this case was lodged long back in the year 2006 and as such, while dismissing the present petition, it is desirable to observe that the learned trial court may take appropriate step so that trial may come to its logical end without unnecessary delay.

The petition stands dismissed.

(Rakesh Kumar, J.)

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