

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3119 of 2013

Arising Out of PS.Case No. -79 Year- 2003 Thana -LAUKHA District- MADHEPURA

Vishun Deo Yadav, S/o Shri Tulsi Yadav, Resident of Village-Vishanpur, P.S.-
Laukaha, District- Madhubani. Petitioner

Versus

1. The State of Bihar
2. Sri Kishun Yadav, son of Late Kunai Yadav.
3. Sri Banshi Yadav, son of Late Kunai Yadav.
4. Shivji Poddar, son of Late Uchit Poddar.
5. Shirdhar Yadav, son of Adhik Yadav.
6. Kusum Lal Yadav, son of Adhik Yadav.
7. Shyam Lal Yadav, son of Shivdhar Yadav.
8. Fudur Poddar, son of Shivji Poddar.
9. Vinod Poddar, son of Shivji Poddar.
10. Parsadi Yadav, son of Adhik Yadav.
11. Ashok Yadav, son of Parsadi Yadav.
12. Adhawi Yadav, son of Late Mahrup Yadav.

All are resident of village:-Basudeopur Tolekhap Dakshinbari tola, P.S.-
Laukaha, District-Madhubani. Opposite Party

Appearance :

For the Petitioner/s : Mr. Barun Kumar Choudhary, Advocate
Mr. Lalit Narayan Jha, Advocate

For the Opposite Party No.2 : Mr. Madhaw Prasad Yadav, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-05-2015

Heard learned counsel for the petitioner and learned
counsel for the State as well as learned counsel appearing on behalf
of the opposite party nos. 2 to 12.

This application under Section 482 of the Code of
Criminal Procedure (hereinafter referred to as “the Code”) has been
filed for quashing of the order dated 30th July, 2012 passed by the
learned District & Sessions Judge, Madhubani in Criminal Revision
No. 199 of 2012 by which the order dated 27.03.2012 passed by the

learned Judicial Magistrate, Jhanjharpur in Laukha P.S .Case No. 79 of 2003 whereby he has allowed the petition of the prosecution on 27.07.2010 filed under Section 311 of the Code has been set aside.

The aforementioned Laukha P.S. Case No. 79 of 2003 was registered for the offence punishable under Sections 147, 148, 149, 447, 341, 323, 324 and 504 of the Indian Penal Code. After completion of investigation, the police submitted charge sheet in the case and the learned A.C.J.M. Jhanjharpur took cognizance of the offence vide order dated 07.09.2003. After framing of charges on 12.04.2007 against the accused persons, the witnesses were summoned. However, no witness turned up for about three years and ultimately the learned Magistrate closed the prosecution evidence vide order dated 23rd June, 2010 and by the same order 27.07.2010 was fixed for recording the statement of the accused under Section 313 of the Code. On 27th July, 2010, an application was filed on behalf of the prosecution under Section 311 of the Code for examining the witnesses cited in the charge sheet. On the same date, attendance of one of the witnesses was also filed before the learned Magistrate.

The aforementioned application dated 27.07.2010 was heard by the learned Magistrate and after hearing the parties, the learned Magistrate allowed the same. The learned Magistrate



directed the prosecution to produce all its witnesses within three dates. The aforementioned order dated 30th July, 2012 was challenged in revision by the opposite party nos. 2 to 12 (accused persons) before the Sessions Court. The revisional Court having appreciated the rival contentions, allowed the revision application and set aside the order 27.03.2012 passed by the learned Judicial Magistrate on the ground that the prosecution was sitting tight over the matter for quite a long time and a belated application filed by the prosecution for examining the witnesses was neither reasonable nor proper and in that view of the matter, the Magistrate concerned ought to have dismissed the same.

I have heard Mr. Barun Kumar Choudhary, learned counsel for the petitioner, Mr. R.C. Sahni, learned APP for the State and Mr. M.P. Yadav, learned counsel appearing for the opposite party no. 2.

It has been contended that the summons issued by the Court were never served upon the witnesses, who are poor labourers working outside the State of Bihar in order to earn their livelihood. The moment, they came to know regarding the stage of ongoing trial, they approached the learned counsel appearing for the prosecution and expressed their willingness to depose in the case pursuant to which an application under Section 311 of the Code was filed on behalf of the prosecution and after hearing the parties,

the learned Magistrate allowed the same in the interest of justice. It has further been submitted that there is no illegality in the aforementioned order dated 27.03.2012 passed by the learned Magistrate and the revisional Court ought not to have interfered with the same in absence of any material illegality or irregularity in the order.

On the other hand, learned counsel for the State and learned counsel for the opposite party no. 2 have supported the revisional order dated 30th July, 2012, whereby the impugned order dated 27.03.2012 passed by the learned Magistrate has been set aside. They have submitted that since the matter is quite old and, as such, the court below should not have recalled its earlier order by which the prosecution case was closed specially in view of the bar put under Section 362 of the Code. They have further argued that the belated application filed by the prosecution was nothing but an attempt to delay the conclusion of trial.

I have heard respective counsel for the parties and perused the record. The object of the provision of Section 311 of the Code, as a whole, is to do justice not only from the point of view of the accused or the prosecution but also from the point of view to enable the Court to find out the truth and render a just decision. The provisions of Section 311 are enacted whereunder any Court by exercising its discretionary authority at any stage of



inquiry or trial or other proceedings can summon any person as a witness, or examine any person in attendance, though not concerned as a witness, or recall and re-examine any person already examined who are expected to be and able to lay upon matter in dispute. **The very uses of words such as, “any Court”, “at any stage of any inquiry”, “trial or proceedings”, “any person”, or “any such person”** clearly spells out that Section 311 of the Code is expressed in widest possible terms and do not limit the discretion of the Court in any way. There is no limitation on the power of the Court arising out from the stage to which the trial may have reached provided that such power should be exercised only in order to find out the truth and render a just decision of the case.

As far as the question whether the order summoning the prosecution witnesses after the prosecution evidence was closed would amount to review is concerned, in my view, the bar created under Section 362 of the Code cannot apply as it adverts to the final order and judgment. In this case, the earlier order by which the prosecution evidence was closed was neither a final order disposing of the case nor a judgment. Moreover, a textual reading of Section 311 of the Code does not justify any limitation upon the power of the Court from summoning anyone to depose in the case. I am also of the view that since there was no apparent error in the order passed by the learned Magistrate, the learned Sessions Judge,

Madhubani was not correct in interfering with the order of the Magistrate in exercise of revisional jurisdiction.

In that view of the matter, the impugned order dated 30th July, 2012 passed by the learned Sessions Judge, Madhubani in Criminal Revision No. 199 of 2012, is set aside.

However, keeping in view the fact that right to a speedy trial is implicit in the guarantee of life and personal liberty enshrined under Article 21 of the Constitution, I direct the learned Judicial Magistrate, Jhanjharpur, before whom the matter is pending, to proceed with the case on day-to-day basis and if the prosecution fails to examine all its witnesses within three months from the date of receipt/production of a copy of this order, to close the prosecution case and proceed to the next stage of the case.

With the aforesaid observation and direction, the application stands allowed.

(Ashwani Kumar Singh, J.)

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