

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29161 of 2010

Arising Out of PS.Case No. -2 Year- 2001 Thana –Dumariya Ghat District- EAST
CHAMPARAN (MOTIHARI)

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1. Sudistha Narain Mishra, son of late Brahmdev Mishra
 2. Shyam Kishore Mishra, son of late Ramashish Misahra
 3. Pappu Mishra, son of Sh. Jagdish Narain Mishra
 4. Bharat Mishra, son of late Hari Shankar Mishra
 5. All residents of village Sareya Baduraha, P.S. Dumaria Ghat, Distt. East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. Nirmala Devi, wife of late Bishun Kant Dubey, resident of village Rampurwa, P.S. Dumariya Ghat, Distt. East Champaran at Motihari

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sumant Singh, Adv.
Mr. Rakesh Kumar, Adv.
For the State : Mr. R.B.S. Pahepuri, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
ORAL JUDGMENT
Date: 02-02-2015

Heard learned counsel for the Petitioners and the State.

The Petitioners seek quashing of the order dated 4.3.2010 passed in Criminal Revision No. 58 of 2003 and 33 of 2009 by which the 1st Additional Sessions Judge, Motihari, East Champaran, has set aside the order of the Sub Divisional Judicial Magistrate, Sadar, Motihari, dated 10.2.2003 in Trial No. 2473 of 2002 in connection with Dumaria Ghat P.S. Case No. 02 of 2001 by which he had allowed an application under Section 321 Cr. P.C. i.e. withdrawal of the Prosecution.

The case of the Informant Nirmala Devi, wife of late

Bishun Kant Dubey is that on the date of occurrence, the accused persons variously armed, shot dead his brother Kapildeo Dubey on account of some differences over control of the 'Math'. Three persons were arrested but Charge sheet was submitted against all the accused persons. Later, further investigation was carried out on the orders of the AIG of Police after which Final Report was submitted.

Earlier, on submission of Charge sheet, the Court had taken cognizance on 9.5.2001 and issued processes for appearance of the Accused.

The Investigating Officer after submission of second Closure Report, filed an application before the Chief Judicial Magistrate, Motihari, to release the arrested accused since on reinvestigation under the orders of AIG Police, there was no material against them. However, the Court rejected such a prayer and transferred the case to another Magistrate for taking steps to commit the case.

The accused persons then moved the Sessions judge for transfer of the case to another Court on ground of delay in commitment which was allowed by the order dated 13.12.2002 and the case was transferred to the Sub Divisional Judicial Magistrate, Motihari with a direction to commit the case within one month.

In the meanwhile, on 29.7.2002, the case of one accused namely Prabhu Mishra in custody was committed to the

Court of Sessions.



On 5.10.2002, the APP in-charge of the Court of Sub Divisional Judicial Magistrate, Saran, filed an application under Section 321 Cr. P.C. praying for permission to withdraw the prosecution against all the ten accused persons. The Magistrate considering that the case of one accused Prabhu Nath Mishra had been committed to the Court of Sessions by the earlier Magistrate on 29.7.2002 rejected such a prayer with regard to the four appearing accused i.e. Krishna Kant Mishra, Triloki Mishra, Shivjee Mishra and Chandra Kishore Mishra. He held that since no case remained with him after the withdrawal petition, he proceeded to discharge the rest of the non-appearing accused persons including the present Petitioners by recalling process as against them. He also took note of the order of the Revisional Court in Transfer Petitions wherein it had directed that the case be committed to the Court of Sessions and subsequently to act in accordance with law.

The Informant then filed a Criminal revision vide Cr. Revision No. 58/13 of 2003-09. The Revisional Court considered the settled law that a case as a whole is committed and not an accused and it would be a contradiction in law that some accused of a case would be tried on the case being committed to the Court of Sessions, while the remaining accused would stand discharged on the prayer of the APP for withdrawal of Prosecution, and hence allowed the Revision.

As against this, the Petitioners have filed the instant application.

Law is well settled on the point that when a withdrawal petition is filed, the Court is not to act as a mere spectator but in such a situation to apply itself as to whether by allowing withdrawal it is dispensing justice. Hence, I would uphold part of the order of the Judicial Magistrate by which he rejected such a prayer with regard to the four appearing accused persons.

Further, the Revisional Court was correct in abiding by the established principle of law that case as a whole and not an accused is committed to the Court of Sessions and held that the Magistrate had not acted in accordance with law in discharging the non-appearing accused persons including the present Petitioners.

Hence, finding no merit in the application, the same is dismissed.

The Trial Court is directed to proceed with the Trial and conclude the same positively within a period of nine months without giving unnecessary adjournment to any Party for which reason, the Trial Court (1st Additional Sessions Judge), Motihari, East Champaran, is directed to send a list of the witnesses **fixing specific dates** for production of the witnesses along with a copy of this order in connection with Criminal Revision No. 58 of 2003 and 33 of 2009 arising out of Trial No. 2473 of 2002, to the Superintendent of Police,

East Champaran at Motihari, and the Superintendent of Police, East Champaran at Motihari, is directed to ensure production of the witnesses on the date so fixed by the Trial Court so that there is no further delay in trial.

The counsel for the Informant’s wife who has been substituted undertakes to be vigilant during Trial.

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(Anjana Prakash, J)

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