

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25625 of 2012

Arising Out of Complaint Case No. 700 C Year- 1998 District- KISANGANJ

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Tasalimuddin @ Md. Tasalimuddin S/O Late Amzad Ali, resident of Village Sisauna, P.O. and P.S. Jokihat, District Araria.

.... Petitioner/s

Versus

1. The State of Bihar

2. Jagdish Chandra S/O Tara Chandra Agrawal, resident of Thakurganj, P.O. and P.S. Thakurganj, District Kishanganj.

.... Opposite Parties/s

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Appearance :

For the Petitioner/s : Mr. SBK Manglam, Advocate

For the Opp. Party No.1 : Mr. Mayanand Jha, Addl.P.P

For the Opp.Party No. 2 : Mr.Raju Giri, Advocate
Mr.Nikhil Kr.Agrawal, Advocate
Mr.Santosh Kr.Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 28-01-2015

Heard the parties.

2. The petitioner has approached this Court in the present proceeding filed under Section 482 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C") with a prayer for quashing the criminal prosecution of the petitioner in connection with Complaint Case No. 700 C of 1998 giving rise to Trial No. 1344 of 2011 (now Trial No. 968 of 2014) pending in the court of learned Judicial Magistrate, Ist Class, Kishanganj primarily on the ground of violation of his right to speedy trial guaranteed under Article 21 of the Constitution of India.

3. Learned counsel appearing on behalf of the petitioner has submitted that opposite party no.2 filed the aforesaid Complaint Case No. 700 C of 1998 on 22.07.1998 in the court of learned Chief Judicial Magistrate, Kishanganj alleging commission of various offences including offences under Sections 328, 384, 379 and 120B of



the Indian Penal Code besides other allied and minor offences under the Indian Penal Code. It is pointed out that an enquiry under Section 202 Cr.P.C. was conducted by the learned Judicial Magistrate wherein five witnesses were produced on behalf of the opposite party no.2 on different dates in the year 1998 itself and accordingly cognizance was taken by the learned Magistrate by order dated 20.02.1999 and processes were issued against the accused persons including the present petitioner. He has fairly conceded that the order taking cognizance was subject matter of challenge before the learned Sessions Judge, Purnea in Cr.Revision No. 142 of 1999 which was ultimately dismissed on 24.04.2000. Thereafter, the petitioner moved this Court in Cr.Misc.No.29227 of 2000, which was ultimately dismissed by order dated 06.08.2002 and order taking cognizance was not interfered with. It is the case of the petitioner that thereafter he surrendered in the court below and was released on bail on 05.09.2003.

4. The grievance of the petitioner is that 08.12.2003 was the first date fixed for recording pre-charge evidence in terms of Section 244 Cr.P.C. and thereafter on one pretext or other the case was adjourned at the behest of the complainant and after more than two years, the complainant could produce one witness on 29.12.2005. Thereafter again matter was adjourned on different dates. Second witness was examined on 07.02.2009. Though the matter is pending for more than 11 years since the first date fixed on 08.12.2003, but all the witnesses for the purpose of recording pre-charge evidence have not been produced by the complainant-opposite party no.2 and the petitioner, who is said to be a very old person, is being unnecessarily harassed. According to learned counsel for the petitioner, the instant criminal prosecution is really a malice prosecution at the instance of

the opposite party no.2. Therefore, according to him, entire criminal prosecution is fit to be quashed by this Court on the ground of infraction of right to speedy trial guaranteed to the petitioner under Article 21 of the Constitution of India.

5. When this matter was taken up for consideration by this Court on 24.10.2013, notice was issued to the opposite party no.2- the complainant in admission matter. However, it was clarified by that order itself that “pendency of this application shall not be construed as stay of further proceeding in the court below. The learned Magistrate can proceed with the case and shall make all endeavour to take it to its logical conclusion”. By the aforesaid order dated 24.10.2013 itself a report was called for from the learned Judicial Magistrate, Ist Class, Kishanganj as to why charge has not been framed against the petitioner till date though the complaint case was filed in the year 1998 and first date for recording pre-charge evidence was fixed on 08.12.2003.

6. In view of the aforesaid order, the opposite party no.2 has entered appearance through his counsel, but no counter affidavit has been filed on his behalf controverting the facts stated in the main application. However, a report has been submitted by the learned Judicial Magistrate, Ist Class, Kishanganj which is kept at Flag ‘M’. As per aforesaid report, only two witnesses have been examined so far at the pre-charge evidence and complainant filed several time petitions for producing other witnesses. It has also been reported that bail bonds of other accused persons have been cancelled due to their non-appearance on the dates fixed and non-bailable warrant of arrest has been issued against them. The case is still pending for appearance of the remaining accused persons.

7. Learned Additional Public Prosecutor appearing on



behalf of the State as also learned counsel appearing on behalf of the opposite party no.2 have opposed the prayer made in the present application. According to them, in view of law laid down by two constitution Benches of the Hon'ble Supreme Court in the cases of **Abdul Rehman Antulay and others Vs. R.S.Nayak and another [(1992) 1 SCC 225]** and **P.Ramchandra Rao Vs. State of Karnataka [(2002) 4 SCC 578]**, the criminal prosecution cannot be quashed merely on the ground of delay and on the ground of infraction of right to speedy trial. It is pointed out by the learned counsel appearing on behalf of the opposite party no.2 that since other accused persons are absconding, therefore, the trial could not be taken to its logical conclusion.

8. After having heard the parties and taking into consideration the entire factual matrix of the case, this Court is of the considered opinion that the issues raised herein in the present proceeding are squarely covered by a Constitution Bench judgment of the Hon'ble Apex Court in the case of **Abdul Rehman Antulay Vs.R.S.Nayak (supra)**. The principles laid down there in that case came up for consideration once again by another Constitutional Bench of the Hon'ble Apex Court in the case of **P.Ramchandra Rao Vs.State of Karnataka (supra)** and the principles laid down there previously in A.R.Antulay's case has been reiterated in paragraph 29 of the said judgment. In view of the binding precedent and the law laid down by the Hon'ble Apex Court, referred to above, and taking into consideration the factual matrix of the present case, this Court disposes of the present proceeding with the following directions:

- (a) If other accused persons are still absconding and their presence have not been secured, then the trial of the petitioner shall be separated from that of other accused persons and shall proceed on day-to-day basis as this case is pending since the year 1998.

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- (b) The learned Magistrate shall conclude the recording of pre-charge evidence on behalf of the complainant within a maximum period of three months from the date of receipt/production of a copy of this order.
 - (c) The complainant shall be obliged to produce the remaining witnesses on the dates fixed and he shall not be granted adjournments merely on asking for production of witnesses.
 - (d) The petitioner shall be obliged to cooperate for conclusion of the recording of pre-charge evidence on behalf of the complainant at the stage of pre-charge evidence in terms of Section 244 Cr.P.C. and he shall also not be granted adjournments merely on asking.
 - (e) After recording the pre-charge evidence within the aforesaid period of three months, the court shall proceed further in accordance with law. If the petitioner is not discharged in terms of Section 245 Cr.P.C., then the learned Magistrate shall frame charge against the petitioner in terms of Section 246 Cr.P.C. and without any unnecessary delay shall conclude the trial of the petitioner at an early date preferably within a maximum period of six months from the date of framing of charge.

9. It is also observed that if the learned Magistrate in seisin of the case does not carry out the present order as per the time schedule, then appropriate order may be passed in administrative side against him for non-compliance of the time schedule fixed by this Court and non-compliance of the present order.

10. Let this order be forwarded to the learned Sessions Judge, Purnea also, who shall ensure the compliance of the present direction and shall monitor the matter, so that the trial of the petitioner is taken to its logical conclusion within the time frame. The petitioner and opposite party no.2 shall appear through their lawyers before the learned Magistrate with a certified copy of the present order within a maximum period of four weeks from today and thereafter they shall appear on the dates fixed by the learned Magistrate, so that the trial in

question is concluded within the time prescribed by this Court.

11. The present application stands finally disposed of.

(Birendra Prasad Verma, J)

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