

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42714 of 2012

1. Anar Devi W/O Surendra Chauhan Resident Of Village- Makanpur
Govindpur, Beldmi, Police Station- Noorsarai, District- Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rabindra Prasad Singh

For the Opposite Party/s : Mr. Mayanand Jha (App)

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

2 14-05-2015 It is rather unfortunate that an officer of the rank of Additional Sessions Judge did not notice certain basic aspects of criminal law , and has virtually permitted miscarriage of justice to take place through his order 6-9-2012. Obviously, on account of such lop-sided approach, Sessions Trial No. 398 of 1992 is pending for the past more than two decades.

2. The trial for the offences punishable under section 302 and other sections of the Indian Penal Code is taking place in the case referred to above. Though it was the duty for the prosecution to ensure that the witnesses , and at least the investigating officers are examined, there is serious lapse. When the matter being proceeded, in the absence of evidence of the investigating officer,



the informant-petitioner herein filed an application under section 311 of the Code of Criminal Procedure with a prayer to direct the investigating officer to depose as a witness. The trial court proceeded as though it is the duty of the informant, to bring the witness, and rejected the application through the order dated 6-9-2012, mainly on the ground that the matter is pending since long time. Hence, this petition.

3. Heard learned counsel for the petitioner and learned additional Public Prosecutor.

4. It is invariably the duty of the prosecution, to procure and examine the witnesses. Whatever be the possibility or otherwise of procuring the private individuals as witnesses, at least the investigating officer and other Government officials, who had any role to play in the matter, must depose, and if necessary, made to depose. It is not necessary that the concerned police official, who conducted the investigation, alone must depose. If such an officer has been transferred or retired from service, the one posted in the police station can depose, on the basis of record maintained by the police station. Unfortunately, the trial court omitted to take note of this fundamental aspect into account, and refused to direct the prosecution to arrange for deposition of the investigating officer. It does not need any mention that failure to

examine the investigating officer would prove fatal, to the case, even if the other evidence is sufficient to convict the accused.

5. Therefore, this criminal miscellaneous petition is allowed and the order under challenge dated 6-9-2012 passed in S.T. No. 398 of 1992 is quashed.

6. The trial court shall direct the Public Prosecutor to ensure that the investigating officer is examined as a witness and dispose of the aforesaid Sessions Trial within a period of two months from today. It is also made clear that if the prosecution fails to examine the investigating officer, it shall be treated as a failure on the part of the Superintendent of Police and the same shall be brought to the notice of the Director General of Poice.

(L. Narasimha Reddy,CJ)

B.K.Roy/-AFR

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