

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19635 of 2013

Arising Out of PS.Case No. -42 Year- 2000 Thana -KARAGHAR District- SASARAM (ROHTAS)

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Jagdish Singh son of Sheopujan Singh resident of Village- Amavaliya,
Police Station- Kargahar, District- Rohtas At Sasaram

.... Petitioner/s

Versus

1. The State Of Bihar
 2. Vijay Kumhar son of Late Hari Kumhar
 3. Singhasan Prasad son of Late Hari Kumhar
 4. Ajay Kumhar son of Sudarshan Kumhar
 5. Sudarshan Kumhar son of Sukhdeo Kumhar
 6. Jai Shankar Kumhar son of Late Hari Kumhar
 7. Kumar Kumhar son of Sukhdeo Kumar
 8. Mukesh Kumhar son of Ram Singhasan Prasad
- All OP no. 2 to 8 are resident of village Amvaliya P.S. Kargahar District
Rohtas

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Sri Ram Chandra Singh
For the Opposite Party/s : Mr. Damodar Prasad (APP)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6 05-04-2016 Heard Sri Ram Chandra Singh, learned counsel for the

petitioner and Sri Damodar Prasad , learned A.P.P.

The petitioner, who is the informant in Kargahar P.S.
Case No. 42 of 2000 corresponding to Sessions Trial No. 174 of
2005 has approached this court invoking its inherent jurisdiction
under Section 482 of the Code of Criminal Procedure, 1973 with
a prayer to quash an order dated 22.4.2013 passed by the learned
Additional Sessions Judge 4, Rohtas at Sasaram. By the said order
the learned Sessions Judge has rejected the petitions filed

separately on behalf of the petitioner/ informant as well as the State under Section 311 of the Cr.P.C. Learned counsel for the petitioner further makes a prayer for quashing of the order dated 12.3.2013 whereby prosecution case was closed by the learned Trial Judge.

In this case earlier by order dated 26.7.2013 while directing for issuance of notice to the opposite party no. 2 to 8 a bench of this court had restrained the trial court to pass final order. Despite valid service of notice, the opposite parties, who are accused have preferred not to appear. Accordingly, the case was heard ex- parte against the private opposite parties.

It is the case of the petitioner that in an occurrence which had taken place in the year 2000 his younger brother was done to death by gun shot injuries given by the accused persons. In the said occurrence while petitioner tried to save his brother he also received fire arm injuries. On the basis of the fardbyan of the petitioner an F.I.R. vide Kargahar P.S. Case No. 42 of 2000 was registered under Section 147, 148, 149, 323, 324, 307, 302 of the Indian Penal Code and Section 27 of the Arms Act. After investigation charge sheet was submitted and accused persons were put on trial. However, even though charges were framed on 13.9.2005 the prosecution could examine only two witnesses.

Accordingly, as a last indulgence, by order dated 5.3.2013 the learned Trial Court i.e. Additional Sessions Judge – 4 had adjourned the case. Thereafter, on 12.3.2013 due to non - production of other witnesses, the learned Trial Judge closed the prosecution evidence and subsequently, petition was filed under Section 311 of the Cr.P.C. for allowing the prosecution to examine witnesses, which was finally turned down by the impugned order i.e. order dated 22.4.2013. Learned counsel for the petitioner accepts that there was case and counter case. He submits that on the same date from the accused side also an F.I.R. was lodged. In the said occurrence it was alleged that from the hand of the informant's side of the present case father of the informant of said case was done to death and as such, separate F.I.R. was lodged vide Kargahar P.S. Case No. 43 of 2000 under Section 147, 148, 149, 323, 324, 307, 302 of the Indian Penal Code, in which case also charge sheet was submitted and accused persons including the petitioner were put on trial. He submits that in the said case also i.e. Sessions Trial No. 25 of 2005, till date only three prosecution witnesses have been examined. However, in said case also trial is still continuing and till date only three witness have been examined. It was submitted by learned counsel for the petitioner that if a short accommodation is granted the

prosecution will try to adduce all the private witnesses without any delay.

Learned Additional Public Prosecutor submits that the purport of Section 311 is not to allow the prosecution to fill up the gaps. Learned A.P.P. submits that it is settled that power under Section 311 of the Cr.P.C. is not to be exercised to allow the prosecution to fill up the lacuna of the prosecution case. However, he has not disputed the fact that in such serious cases proper steps are required to be taken for securing attendance of the witnesses.

Besides hearing learned counsel for the parties I have also perused the materials available on record. Fact remains that only on one date the learned Trial Judge, as indicated, had granted time as a last indulgence for producing prosecution witnesses and immediately on the next date i.e. on 12.3.2013 the learned Trial Judge closed the prosecution case. The court is of the opinion that in cases of serious offences strict steps must be taken for securing attendance of the witnesses for doing proper justice to the society. Immediately after the case was closed petitions, both on behalf of the prosecution and the informant, were filed for allowing the prosecution to adduce witnesses and as such, keeping in view the seriousness of the offence, the learned

Trial Judge was required to take lenient view in favour of the prosecution and as such, the court is of the opinion that for proper adjudication in the matter it would be necessary to allow the prosecution, to grant some reasonable time to produce witnesses for proper termination of the trial in question. So far as the submission made by the learned A.P.P. is concerned, the court is conscious that power under Section 311 of the Cr.P.C. may not be invoked for allowing the prosecution to fill up the gaps but in the present case out of 11 charge sheeted witnesses only two witnesses were examined. So it cannot be said that for filling up lacuna the prosecution was making prayer for allowing examination of witnesses in an illegal manner. If a criminal case is instituted steps are to be taken for securing attendance of all the witnesses or necessary witnesses for just decision in the trial. Accordingly, the court is of the opinion that even though the F.I.R. was lodged in the year 2000 some reasonable time can be granted to the prosecution to examine the witnesses. Since an undertaking was given by learned counsel for the petitioner / informant that informant will try to produce witnesses without any delay the court proposes to grant three months time to the prosecution to produce non official witnesses for their examination before Trial Court. After examination of all the

private witnesses within three months the learned Trial Judge, the prosecution as well as Trial Court may also take steps for securing attendance of remaining official witnesses. For production of official witnesses the learned Trial Judge may ask the concerned Superintendent of Police for production of official witnesses. If such request is made by the learned Trial Judge the concerned Superintendent of Police will be duty-bound to render full assistance to the Trial Court for proper adjudication of the case. Three months time will commence from the date of receipt / production of a copy of this order. Accordingly, with above observation and direction the present petition is allowed. The impugned order i.e. the order dated 22.4.2013 as well as the order dated 12.3.2013 passed by the learned Additional Sessions Judge-4 in Session Trial No. 174 of 2005 are hereby set aside.

It is made clear that the learned Trial Court will adhere to the three months time for examination of private witnesses provided there is no intentional delay or laches on the part of the defence also. Defence will also co-operate for early disposal of the case.

The petition stands allowed.

(Rakesh Kumar, J)

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