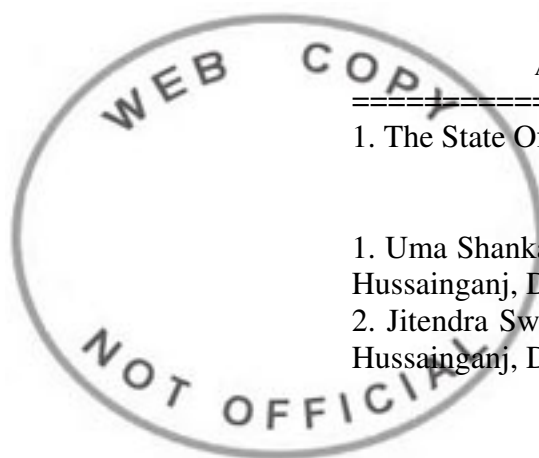




IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.11 of 2012

Arising Out of PS.Case No. -14 Year- 2000 Thana –Maharajganj, District- SIWAN

1. The State Of Bihar

.... .... Appellant/s

Versus

- 1. Uma Shankar Singh S/O Late Ramdeo Singh Resident Of Village- Renua, P.S.- Hussainganj, District- Siwan(Since dead)
- 2. Jitendra Swami S/O Sri Uma Shankar Singh Resident Of Village- Renua, P.S.- Hussainganj, District- Siwan

.... .... Respondent/s

with

Criminal Appeal (DB) No. 484 of 2012

Arising Out of PS.Case No. -14 Year- 2000 Thana -null District- SIWAN

Vijay Singh S/O Late Jang Bahadur Singh Resident Of Village Jigrahwan, Police Station Maharajganj In The District Of Siwan.

.... .... Appellant/s

Versus

- 1. The State Of Bihar.
- 2. Uma Shankar Singh S/O Late Ramdeo Singh Resident Of Village Renua, Police Station Hussainganj In The District Of Siwan.(Since dead)
- 3. Jitendra Swami S/O Sri Uma Shankar Singh Resident Of Village Renua, Police Station Hussainganj In The District Of Siwan.

.... .... Respondent/s

with

Criminal Appeal (DB) No. 755 of 2013

Arising Out of PS.Case No. -14 Year- 2000 Thana -MAHARAJGANJ District- SIWAN

Devanti Devi W/O Late Bharat Singh R/O Village Jigrahawan, P.S. Maharajganj, District Siwan.

.... .... Appellant/s

Versus

- 1. The State Of Bihar.
- 2. Jitendra Swami S/O Late Uma Shankar Singh Resident Of Village Renua, P.S. Hussainganj, District Siwan.

.... .... Respondent/s

with

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**Criminal Miscellaneous No. 13766 of 2012**

Arising Out of PS.Case No. -0 Year- null Thana -null District- SIWAN

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Vijay Singh S/O Late Jangbahadur Singh R/O Village & Pst Jigrawan, Police Station - Maharajganj, District - Siwan

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. Jitendra Swami, S/o Uma Shankar Singh
3. Uma Shankar Singh, S/o Late Ramdeo Singh, both residents of vill-Renua, P.S. Hussainganj, Dist-Siwan.(Since dead)

.... .... Opposite Party/s

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**Appearance :**

**(In G. APP. (DB) No. 11 of 2012)**

For the Appellant/s : Mr. Ashwani Kumar Sinha(APP)

For the informant : Mr. Kanhaiya Prasad Singh(Sr.Adv.)

**(In CR. APP (DB) No. 484 of 2012)**

For the Appellant/s : Mr. M/S Prabhakar Singh & Rakesh Mohan Singh

For the State : Mr. M/S. Ajay Mishra(A.P.P.) & A.Sharma(A.P.P.)

**(In CR. APP (DB) No. 755 of 2013)**

For the Appellant/s : M/S Prabhakar Singh & Rakesh Mohan Singh

For the State : M/S Ajay Mishra & A. Sharma.

**(In Cr.Misc. No. 13766 of 2012)**

For the Petitioner/s : M/S Prabhakar Singh & Rakesh Mohan Singh

For the respondent No.2 : Mr. Kanhaiya Prasad Singh(Sr.Adv.)

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)**

**Date: 25-01-2016**

Out of four applications, one is a Government Appeal, the other is Appeal against acquittal by the informant and the third is Appeal against acquittal by the widow of the deceased, who had been kidnapped and whose body had been found the next day. The fourth application is the application under section 407 of the Code of Criminal Procedure , which had been filed in this Court prior to the

judgment of acquittal having been delivered, for transfer of the case from the trial court to any other court.

2. Notices had been issued to the accused persons, who had been acquitted by the trial court. Let it be recorded that the accused were two, who were put on trial. They were father and son. The father, Uma Shankar Singh, has since died, during the pendency of these applications before this Court.

3. We have heard learned counsel for the State, learned counsel for the other two appellants i.e., the informant and the widow of the deceased, being the person aggrieved and the application for transfer, as well as, Mr. Kanhaiya Prasad Singh, learned senior counsel appearing for the sole surviving accused, who has been acquitted.

4. Having heard the parties, we record that it would not be in the interest of justice to discuss the case in detail, for it may prejudice one or the other party, in view of the order that we propose to pass. We are noticing the bare minimum facts.

5. An F.I.R. was lodged alleging that on the day of Parliamentary Election on 17-2-2000 Uma Shankar Singh, who was one of the contesting candidates along with his son and others came and allegedly kidnapped the informant's elder brother Bharat Singh. Bharat Singh happens to be the younger brother of Damodar Singh,



who was a contesting candidate as well. On the next day, an abandoned dead body of Bharat Singh was found. The Police took up investigation and charge-sheet had been filed against Uma Shankar Singh, who had been elected as a member of Parliament, and his son. The case having been committed to the Court of Session, they were being tried. There being inordinate delay in trial for one reason or the other. Jitendra Swami, who was the son of the elected member and an accused, approached this Court, and this Court directed expeditious day to day trial, so that the trial may be concluded within three months. As usual, the trial was not so concluded and it dragged on. When the argument was concluded, a petition was filed before the learned District Judge for transfer of the case to another court on various pleas, including mentioning that it had been learnt that the learned Additional Sessions Judge trying the matter, had close acquaintance with the accused persons. The learned Sessions Judge heard the matter and dismissed the application. The informant then filed this Criminal Miscellaneous Application No. 13766 of 2012 before this Court for transfer. Having filed it before this Court, a certificate was issued by the lawyer of this Court, which was filed before the trial court, requesting the trial court to stay any further steps to be taken in that court. The trial court proceeded to hear the matter. The petitioner aforesaid, being the informant, again



apprehending that the trial court was now in a hurry, moved this Court and prayed for taking up the matter of transfer, out of turn, which, this Court seem to have agreed, and the matter was posted for hearing on stage of admission on 17-4-2012. This was informed to the trial court, as the case had been fixed before the trial court, for filing citations and documents on 16-4-2012. The trial court having been informed and it also happened that the learned senior counsel conducting the trial on behalf of the informant had a bereavement in the family, his mother expired a day or two before this date, and he was performing the last rites, an application was, accordingly, filed before the trial court to adjourn the matter in the above circumstances.

6.The trial court did notice these events but refused to adjourn and on the next day 17.4.2012, a hand-written judgment of acquittal in 58 pages with one or two corrections only was delivered. On 16-4-2012 itself this Court was informed that the lower courts were sitting in morning , there being morning courts, the matter should be heard earlier. The Court agreed, but as noticed above, before this Court could take up the matter on that day i.e. 17.4.2012, the judgment of acquittal had already been passed. The court preferred to keep these proceedings pending for the sake of records, but ultimately the Government Appeal and other two Appeals were filed. This matter was also tagged with them.



7. The basic facts, as noted above, are not disputed by Mr. Kanhaiya Prasad Singh, learned senior counsel. All we can say is that not only justice has to be done but it should seem to have been done as well. What was the great hurry for the trial judge to deliver the judgment after being shown the High Court's cause list, showing that the matter was about to be taken up with regard to transfer. Heavens would not have fallen by delaying the judgment by a day or two. What was the harm in adjourning the matter by a day or two for the counsel to appear and file citations and other documents, when the counsel's mother had expired and he was busy in the last rites. How would justice be frustrated if the judgment delivery was delayed by a day or two, because apparently even before the citations and other documents were filed, the judgment was ready. We say this because on 16<sup>th</sup> April, 2012 an adjournment was refused and on 17<sup>th</sup> April, 2012, 58 pages of hand-written judgment was delivered, with hardly one or two corrections. What the people in general and the informant, the person aggrieved, would perceive. By its conduct the trial court had virtually fortified the apprehension which the informant had. Why did the trial court do everything to frustrate and deny the opportunity to this Court to decide the matter of transfer in terms of section 407 of the Code of Criminal Procedure. It is these matters that compel us to interfere and direct that the matter be re-heard for

judgment by a competent court, and then the judgment be delivered. It is these facts that compel us to interfere in the matter. We have advisedly spoken little, so that neither side is prejudiced nor is at an advantageous position because of our judgment.

8. We, therefore, in the interest of justice, allow the three Criminal Appeals and set aside the judgment of acquittal dated 17-4-2012 passed in Sessions Trial No. 281 of 2006, by the Additional Sessions Judge, (F.T.C.-I), Siwan. Let the records be remitted to the trial court with a request to the learned District Judge, Siwan, to allocate this case to appropriate court for hearing, and deliver the judgment at the earliest. As all the parties are before this Court today, this Court further directs that upon receipt of the records by the lower court, they would finally conclude the hearing within a period of two months, and the trial court will thereafter deliver the judgment. The trial court may pass appropriate orders, if it finds any of the parties not co-operating in the matter.

9. As we have set aside the judgment of acquittal, the sole surviving accused would now be required to appear before the trial court, which court upon his appearance would release him (Jitendra Swami) on bail on bond of Rs.10,000/- with two sureties of like amount to the satisfaction of trial court, of course, subject to the result of the judgment which may be delivered by the trial court in due

course.

10.With these observations and directions, these Appeals are allowed and the application for transfer stands disposed of accordingly.

**(Navaniti Prasad Singh, J)**

B.K.Roy/-

**(Nilu Agrawal, J)**

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