

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28146 of 2016

Arising Out of PS.Case No. -312 Year- 2007 Thana -GOPALGANJ CITY District- GOPALGANJ

1. Sanjay Singh @ Sanjay Kumar, son of Late Dadan singh, resident of Village- Kaithwalia, P.S. & District- Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Pandey No-5-Advocate
For the Opposite Party/s : Md. Iftexhar Mahmood-A.P.P.
For the Informant : Mr. Ranjeet Kumar Pandey-Advocate

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 05-08-2016 Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor assisted by learned counsel for the informant.

2. Because of the fact that by the order impugned, the learned lower Court had rejected the prayer of the petitioner/accused to give him an opportunity to examine one Mahesh Singh, O/c of the Town P. S. Gopalganj, challenged the same under present petition.

3. It has been submitted on behalf of petitioner that accused has got constitutional right to defend himself and any sort of barricading the aforesaid right will ultimately lead the trial to be illegal as well as will become infructuous. Therefore, there happens to be specific provision enumerated under Section 233 of



the Cr.P.C. whereunder accused has been given an opportunity to enter into defence, if he so desires, after exhausting the procedure so enumerated under Section 232 of the Cr.P.C. Therefore, by the order impugned, the learned lower Court infringes the constitutional right of the petitioner in consonance with Section 233 of the Cr.P.C. and so, the order impugned is fit to be set aside.

4. At the other end, the learned Additional Public Prosecutor assisted by learned counsel for the informant have submitted that activity of the petitioner is itself exposed from his own conduct. Petitioner is adamant to keep the record in abeyance anyhow and for that, petitioner is indulged in dubious activities, which is itself apparent from the order dated 22.07.2016 wherein he had knowingly and intentionally put some sort of allegation against the learned District & Sessions Judge and further, succeeded in getting the case transferred to the Court of 6th Additional Sessions Judge, Gopalganj on that score.

5. Apart from this, it has also been submitted that prosecution case was closed on 15.07.2010, statement of accused-petitioner was recorded on 28.07.2011. At an earlier occasion, no such prayer was ever made at the end of the petitioner rather, on 09.09.2011, one petition was filed for calling for the station diary for the relevant period, which was pressed on 21.05.2013 and after



receipt of the same, the same has been exhibited in terms of Section 294 of the Cr.P.C. Then thereafter, another slot has been played by the petitioner by way of filing instant petition that one Mahesh Singh, the Sub-inspector should be called for whereupon rejoinder has been filed by the prosecution and the learned lower Court, considering the conduct of the petitioner rejected the prayer. Therefore, from the conduct of the petitioner, his prayer is found non-maintainable in the eye of law.

6. Ordinarily, whenever accused persons enter into defence, the same should be allowed. But when the prayer happens to be intermingled with malafide, certainly the aforesaid prayer would not be entertained. The petitioner was known since before, who has to be examined in his defence and so, it was expected at the end of the petitioner to have his prayer before the Court for summoning those persons and in likewise manner, calling for the relevant document. Accused should not be allowed to defeat the ends of justice by his illegal activity. The conduct of the petitioner is itself apparent from the order impugned. However, in the facts and circumstances of the case as well as considering the conduct of the petitioner, the prayer of the petitioner is allowed at a cost of Rs.10,000/-, which should be deposited within seven days from today. In case, the aforesaid

amount is deposited, the learned lower Court will give Dasti
Summon to the petitioner within 24 hours and further, the witness
is to be examined within 15 days positively, for that the learned
lower Court will recall the date if the circumstances so necessiate
intimating the prosecution, failing which the opportunity so given
at the present will cease to survive.

7. With the aforesaid direction, instant petition is
disposed of.

(Aditya Kumar Trivedi, J)

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