

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.363 of 2016

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

1. Shashikant Kumar @ Lucho Mahto

2. Manikant Kumar @ Phucho Mahto

Both are the Sons of Shri Dullichand Mahto resident of Keshawe, P.S.- Barauni Refinery (O.P.), District- Begusarai

.... Petitioners

Versus

1. The State of Bihar

2. Bindeshwari Prasad Singh (informant), Son of Late Ramdev Prasad Singh Resident of village- Khutha Tola, P.S.- Barahiya, District- Lakhisarai, at present resident of Vidya Sadan, Makan No.-199, Refinery Gate No.- 1, P.S.- Barauni Refinery (O.P.), District- Begusarai

.... Respondents

Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Senior Advocate
Mr. Anshul, Advocate
For the Respondent-State: Mr. Jharkhandi Upadhyay, APP
For the Informant : Mr. Mayank Shekhar, Advocate
Mr. Sanjeev Dubey, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-07-2016

The instant application under Sections 397 and 402 of the Code of Criminal Procedure has been filed for setting aside the order dated 29.03.2016 passed by the learned Sessions Judge, Begusarai in Sessions Trial No. 588 of 2014 in Barauni Refinery (OP) Case No. 352 of 2014 registered under Sections 302 and 357/34

of the Indian Penal Code.

The petitioners have been made accused in the aforesaid case. The trial of the case is at the fag end. The witnesses have already been examined and the case is fixed for argument. At this stage, an application was filed by the petitioner for summoning the call detail report of the date of occurrence, i.e., 16.08.2014. The trial court had earlier summoned those records, but the mobile service provider sent a report to the Superintendent of Police, Begusarai that the call detail report is not preserved beyond one year and, thus, the same cannot be provided. The prosecution, thereafter, appraised the court regarding non-availability of the call detail report.

In that view of the matter, the court directed the accused persons to advance their arguments. When the petitioners, who are accused in the present case, filed another application for providing the call detail report, the trial court rejected the prayer vide order dated 29.03.2016. The said order is under challenge before this Court.

Mr. Yogesh Chandra Verma, learned Senior Counsel for the petitioners has submitted that the plea taken by the mobile service provider is wrong and in view of sub-rule (ii) of Rule 10 of the Information Technology (Certifying Authorities) Rule, 2000, the

report of the mobile service provider, that the call detail report is not available, cannot be believable.

In my view, the plea taken by the petitioners is of no force. The defence cannot compel the prosecution to produce a document which is not available with him. The defence has a right to lead evidence during trial, but the approach of the defence in the present case seems to delay the trial on one pretext or the other.

In my considered opinion, the order passed by the court below does not suffer from any illegality or irregularity.

Accordingly, the application, being devoid of any merit, is dismissed.

It is made clear that this Court has not expressed any opinion on the merit of the case.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	
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