

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37383 of 2015

Arising Out of PS.Case No. -5 Year- 2012 Thana -BEGUSARAI GRP CASE District-
BEGUSARAI

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Ranjeet Pathak son of Shri Jay Jay Pathak, resident of village- Sarvoday Nagar
Bishanpur, P.S.- Nagar, District- Begusarai. At present posted at Lakho Railway
Station as A.S.M.

.... Petitioner/s

Versus

- 1.The State of Bihar
- 2.The General Manager, East Central Railway, Hajipur
- 3.The Divisional Regional Manager, Sonapur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar, Advocate

For the Railway : Mr. Ramadhar Shekhar, Addl. Standing Counsel, Railway

For the State : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-08-2016

By way of the present application under Section 482 of the
Code of Criminal Procedure (for short 'CrPC'), the petitioner seeks
quashing of the order dated 13.5.2015 passed by the 5th Additional
Sessions Judge, Begusarai in Cr. Revision No.189 of 2014, whereby
the revisional court has affirmed the order dated 21.3.2014 (wrongly
typed as 31.3.2014) passed by the Railway Judicial Magistrate,
Barauni, in Begusarai Rail P.S. Case No.5 of 2012 dated 11.3.2012
and dismissed the revision application preferred by the petitioner.

2. By order dated 21.3.2014, the Railway Judicial
Magistrate, Barauni had rejected the application of the petitioner filed



under Section 239 of the CrPC for discharge from Begusarai Rail P.S. Case No.5 of 2012 in which on submission of the police report under Section 173(2) of the CrPC cognizance of the offences punishable under Sections 279, 336 and 427 of 34 of the Indian Penal Code (for short 'IPC') and Section 175 of the Railways Act, 1989 (for short 'the Act of 1989') has been taken.

3. The prosecution case is based on the written information of one Rabindra Nath Thakur, Sub Inspector of Railway Police Station, Begusarai. It is stated in the written report that on 11.3.2012, at 5 a.m., Train No.12424 Down (Rajdhani Express), was passing through the loop line of up line because main line and down line at Begusarai Station were engaged, but all on a sudden the train stopped and passengers started making noise. It is further stated that the engine of the train got trapped in sand-hemp endangering the safety of the passengers. Though, none of the passengers was injured, the railway suffered loss of property. On enquiry, it was revealed that the alleged incident took place due to none co-ordination between the Assistant Station Master and the Loco-pilot.

4. After completing the investigation, the police submitted charge-sheet no.12 of 2012 dated 31.5.2012 under Sections 279, 336 and 427/34 of the IPC and Section 175 of the Act of 1989 against the petitioner, the Loco Pilot Narendra Kumar and the Assistant Loco



Pilot Niraj Kumar. On perusal of the police report, the Railway Judicial Magistrate took cognizance of the offences punishable under Sections 279, 427 and 336/34 of the IPC and Section 175 of the Act of 1989 and summoned the charge-sheeted accused persons including the petitioner to face trial. At the stage of framing of charge, an application under Section 239 of the CrPC, was filed by the petitioner before the Railway Judicial Magistrate seeking discharge. By order dated 21.3.2014, the Railway Judicial Magistrate, Barauni dismissed the said application of the petitioner, which was challenged by the petitioner before the revisional court and vide impugned order dated 13.5.2015, the learned Additional Sessions Judge-V, Begusarai dismissed the revision application and affirmed the order of the Railway Judicial Magistrate, Barauni dated 21.3.2014. The aforesaid order dated 13.5.2014, is under challenge before this Court.

5. It is submitted by Mr. Ajay Kumar, learned counsel for the petitioner that after derailment of engine of Rajdhani Express i.e. Train No.12424 Down, a report under Section 113(1)(c) of the Act of 1989 was sent to the concerned railway authority, who in turn, as per the rules of the railways, formed a Five-Member Senior Level Officers Committee (for short 'the Committee') for making enquiry in the matter and, the Committee, made thorough enquiry and submitted its report on 16th March, 2012. In its report the Committee exonerated

the petitioner and held that the derailment of engine occurred due to fault of the Loco Pilot Narendra Kumar and the Assistant Loco Pilot Niranjana Kumar, who violated the Red Signal of the Starter.

6. It is submitted that soon after the aforesaid enquiry, the Station Superintendent, Begusarai sent letter dated 22nd March, 2012 informing the officer Incharge of GRP, Begusarai that Divisional Railway Manager, Sonapur has passed the order, whereby the petitioner has been exonerated in the enquiry conducted by the Committee. However, the police paid no heed to the information given to them and on mere assumption and presumption and that too without calling for the enquiry report dated 16.3.2012 and without examining the enquiry report have submitted charge-sheet in the case against the petitioner. It is also submitted that the points of law involved in the case were not considered either by the Railway Judicial Magistrate or by the revisional court, which dismissed the revision application preferred against the order passed by the Magistrate, whereby the application for discharge was rejected.

7. On the other hand, in the light of enquiry report submitted by the Committee, as contained in annexure-3 series to the present application, and in the light of the communication made to the officer-in-charge, GRP, Begusarai by the Station Manager, East Central Railway, Begusarai, as contained in annexure-4 to the present



application, Mr. Mayanand Jha, learned counsel for the State fairly concedes that since the alleged offence is technical in nature and the railway authorities, on enquiry, have come to a finding that the petitioner cannot be held accountable for any act of omission and commission, no useful purpose would be served by putting the petitioner on trial.

8. Mr. Ramadhar Shekhar, learned counsel appearing on behalf of respondents no.2 and 3 has also supported the contentions of the petitioner. A counter affidavit has also been filed on behalf of respondents no.2 and 3. In the counter affidavit also the stand of the General Manager and the Divisional Regional Manager, East Central Railway is that the culpability of the petitioner was not found in the alleged offence in course of enquiry conducted by the Committee.

9. I have heard respective counsel for the parties and perused the record.

10. Section 175 of the Act of 1989 reads as under:

“175. **Endangering the safety of persons.**- If any railway servant, when on duty, endangers the safety of any person -

- (a) by disobeying any rule made under this Act; or
- (b) by disobeying any instruction, direction or order under this Act; or the rules made thereunder; or
- (c) by any rash or negligent act or omission,

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which

may extend to one thousand rupees, or with both.”



11. As discussed, hereinabove, there is nothing on the record on the basis of which it can be said that the petitioner disobeyed any rule, instruction, direction or order made under the Act of 1989. It would be apparent from the enquiry report, as contained in annexure-3 to the present application, that immediately after derailment of engine the matter was brought to the notice of the authority of railway under Section 113(1)(c) of the Act of 1989, which casts a duty upon the Station Master of the station nearest to the place at which the accident occurs or where there is no station master, the railway servant incharge of the section of the railway on which the accident occurs shall, without delay, give notice of the accident of derailment of any train carrying passengers or of any part of such train to the District Magistrate and the Superintendent of Police within whose jurisdiction the accident occurs, the Officer- in-charge of the police station within the local limits of which the accident occurs and to such other Magistrate or police officer as may be appointed in this behalf by the Central Government.

12. Section 115 of the Act of 1989 empowers the railway administration to conduct enquiry in accordance with the prescribed procedure, if an enquiry by the Commissioner is not conducted in terms of Section 114 (1) of the Act of 1989.



13. In the present case, an enquiry was conducted by the Committee constituted by railway administration which opined that there was no culpability of the petitioner in the alleged derailment of the railway engine. Once the Committee consisting of technical experts, exonerated the petitioner from the alleged act of omission and commission, it cannot be said that the petitioner was in any way responsible for any rash or negligent act.

14. Under the circumstances discussed hereinabove, I am of the opinion that the ingredients of the offence punishable under Section 175 of the Act of 1989 are not attracted, as against the petitioner, in the present case. For the same reason, I am also of the view that the ingredients of the offences punishable under the IPC under which the charge-sheet has been submitted and cognizance has been taken by the Railway Judicial Magistrate are not attracted, so far as the petitioner is concerned. I am also of the opinion, in the background of the facts discussed hereinabove, allowing the prosecution to continue against the petitioner would be nothing, but an abuse of process of the court.

15. In that view of the matter, the order impugned dated 13.5.2015, passed by the learned Additional Sessions Judge-V, Begusarai in Cr. Revision No.189 of 2014, cannot be sustained. It is set aside, accordingly. As a consequence of the same, the entire

criminal proceedings, emanating from Begusarai Rail P.S. Case No.5 of 2012 dated 11.3.2012, are also quashed, so far as the petitioner is concerned.

16. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	