

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39233 of 2016

Arising Out of PS.Case No. -143 Year- 2008 Thana -DARBHANGA SADAR District-
DARBHANGA

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1. Mahesh Yadav Son of Late Ram Gulam Yadav Resident of Village -
Saramohanpur, P.S- Sadar, Distt- Darbhanga. Petitioner/s

Versus

1. The State of Bihar Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kedar Jha, Advocate

For the Opposite Party/s : Mr. Sri Indra Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI

SHARAN SINGH

ORAL ORDER

2 13-12-2016 This application has been filed for transfer of Trial

No. 211 of 2010 arising out of Sadar P.S. Case No. 143 of 2008
(G.R. No. 1333 of 2008) from the court of learned 1st Assistant
Sessions Judge, Darbhanga to any other competent court under
the Sessions Division, Darbhanga.

Learned counsel appearing on behalf of the petitioner
has submitted that the petitioner, who is informant of the said case,
has a reasonable apprehension that the informant will not get
justice from the court of learned 1st Assistant Sessions Judge,
Darbhanga. To buttress his submission, learned counsel for the
petitioner has drawn my attention to Annexure-1 of the
application, which is a petition, filed by the informant dated
08.06.2016 mentioning therein that the matter has been fixed for
judgment without giving any opportunity to the prosecution to
enter into argument and file written argument in the said case on



behalf of the informant. He has also drawn my attention to an application, said to have been filed by the Additional Public Prosecutor of the said cases, wherein he sought for time to argue the case as even before the argument of defence was not complete, the case has abruptly been fixed for judgment.

It transpired from the record that the judgment in the said case has been reserved since 31.05.2016.

The main contention of the petitioner is that learned court below has concluded the arguments without hearing the arguments on behalf of the prosecution.

Before filing the present application for transfer under Section 407 of the Code of Criminal Procedure (hereinafter referred to as the Code), the petitioner had filed an application under proviso to said Section 407 of the Code before the court of learned Sessions Judge, Darbhanga for transfer of the concerned trial. The application has been dismissed by an order dated 04.06.2016. From the said order, it appears that learned Public Prosecutor appearing on behalf of the State specifically submitted that the prosecution was given full opportunity to argue the instant case and the prosecution had no any grievance from the court of concerned learned Assistant Sessions Judge, Darbhanga.

The plea therefore, on behalf of the petitioner, that the prosecution was not given due opportunity of making argument,



cannot be sustained.

On a query, made by this Court, as to whether till date, the judgment, in the said trial has been delivered or not, learned counsel for the petitioner has informed that an application was filed before the trial court for not delivering the judgment since an application for transfer (present application) had been made before this Court. Evidently, thus, the judgment in the case has not been delivered only because of the pendency of the present transfer case.

The opinion, which I form from the materials on record that being the informant, the petitioner has tried to take control over the prosecution before the court below of which the Public Prosecutor is in charge under the scheme of Section 225 read with Section 301 of the Code. The role of the informant cannot supersede the role of the Public Prosecutor, at a trial in a Court of Sessions.

I do not find any merit in this application filed on behalf of the informant. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

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