

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43779 of 2013

Arising Out of PS.Case No. -111 Year- 2002 Thana -ALAMGANJ District- PATNA

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Sharwan Kumar, S/O Nathun Prasad R/O Mohalla - Arfabad, P.S. - Alamganj,
District - Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Gayatri Devi W/O Ram Chandra R/O Mohalla - Arfabad, P.S. - Alamganj,
District - Patna

.... Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Ms. Veena Kumari Jaiswal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 13-04-2017

1. This application has been filed for quashing the order dated 23.7.2013 passed by the learned Additional Sessions Judge-I, Patna City, Patna, in connection with Sessions Trial No. 113 of 2003 arising out of Alamganj P.S. Case No. 111 of 2002 by which the learned Sessions Judge has ordered to examine the fired bullet with gun of the petitioner by the Forensic Science Laboratory, Patna.

2. It has been submitted on behalf of the petitioner that the doctor Alok Abhijit (PW6) of Anupama Hospital Pvt. Ltd. was initially examined on 9.2.2011 and on that date he has not produced any fired bullet alleged to be preserved by him which has been extracted from the body of the injured. The said private doctor was recalled for re-examination on 25.9.2012 after production of a



gun by the constable at the instance of the informant and on that date the doctor produced fired bullet from his possession.

3. A petition was filed on behalf of the prosecution on 10.10.2012 for sending the aforesaid fired bullet produced by the private doctor on 25.9.2012 during his evidence, to Forensic Science Laboratory, Patna, for examination as to whether the aforesaid bullet was fired from the gun which has been produced by the constable in the court from *Malkhana*.

4. Petitioner raised objection to the said petition and filed rejoinder on 19.7.2013 but the court below has allowed the petition dated 10.10.2012 filed by the informant for examination of fired bullet produced by the said doctor in his evidence on 25.9.2012. Thereafter, informant again filed a petition on 2.4.2013 for calling the gun from *Malkhana* of Alamganj Police Station for sending the same with the bullet produced by the doctor, to Forensic Science Laboratory, Patna, for its examination.

5. The court below by the impugned order dated 23.7.2013 has allowed the prayer of petitioner made on 2.4.2013.

6. From the impugned order, this Court finds that the aforesaid bullet was produced on 25.9.2012 by a private doctor during his evidence on recall. That bullet was never produced by the doctor before the police during investigation.

7. It was stated by the doctor in his evidence that he



preserved that bullet. The occurrence is said to have taken place on 6.4.2002. It is really surprising to this Court that a private doctor preserved that fired bullet for more than ten years, and produced the same in court at the time of his re-examination.

8. Moreover, the aforesaid bullet was never brought before the police during entire investigation. The aforesaid doctor has not spoken about the aforesaid bullet during his earlier evidence on 9.2.2011. No material exhibit can be taken into consideration by the court during trial, which has been produced by a private doctor for the first time, after over the ten years of occurrence.

9. Therefore, the impugned order dated 23.7.2013 passed by the Additional Sessions Judge-I, Patna City, Patna, suffers from illegality.

10. Accordingly, the application is allowed and the order dated 23.7.2013 passed by the Additional Sessions judge-I, Patna City, Patna, in Sessions Trial No. 113 of 2003 arising out of Alamganj P.S. Case No. 111 of 2002, is hereby quashed.

11. The court below is directed to proceed in the trial in accordance with law.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
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