

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38886 of 2014

Arising Out of PS.Case No. -690 Year- 2007 Thana -SAMASTIPUR District- SAMASTIPUR

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1. Dr. Bhushan Prasad Nayak

2. Bipin Prasad Nayak

Both are S/o late Bhoop Narayan Nayak, resident of Dalsingsarai, P.S.
Dalsingsarai, District-Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Anand Lal Sahani, S/o Jhhapsi Sahani, resident of Village Hakimabad, P.S.
Muffassil, District-Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Naresh Dikshit, Adv.

For the O.P. No. 2 : Mr. Bijay Bhushan Prasad, Adv.

Ms. Vandana Singh, Adv.

For the State : Mr. Harendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT & ORDER

Date: 11-12-2017

Counter affidavit has been filed on behalf of the
opposite party No. 2 in the Court today. Let it be kept on record.

2. Heard learned Counsel for the petitioners, learned
Counsel for the opposite party No. 2 as well as learned Additional
Public Prosecutor for the State.



3. The petitioners seek quashing of the order, dated 15.05.2014, passed by the learned Sessions Judge, Samastipur, in Cr. Revision No. 523 of 2009, whereby, he allowed the criminal revision application filed by the informant of the case for examining the four witnesses, neither named in the charge-sheet by the police nor ever their statements have been recorded by the police under Section 161 of the Code of Criminal Procedure (*in short 'the Cr.P.C.'*).

4. The brief fact giving rise to the case is that the opposite party No. 2, the informant, filed Samastipur Town P.S. Case No. 690 of 2007 against the accused persons, who are petitioners herein, registered under Sections 341, 323, 324 and 307/34 of the Indian Penal Code, alleging therein that when he went over his plot (details of which have been mentioned in the First Information Report) found that the accused persons constructing a house on the same land. The informant objected, being enraged the accused persons, Bhushan Prasad Nayak, one of the accused, inflicted a knife blow hitting left hand and neck of the informant and another accused person, namely, Bipin Prasad Nayak, snatched wrist watch of the informant and Rs. 350/- from his pocket.

5. On completion of the investigation, the police



submitted final form on 14.01.2008, finding the case to be false. On the same day, a protest petition was also filed by the informant. However, the learned Chief Judicial Magistrate took cognizance of the offence, disagreeing with the police report. In the police report, the names of the five witnesses find place and during the trial all the five witnesses were examined. However, thereafter, a petition was filed by the informant to examine the four other witnesses and the same was rejected by the learned trial Court against which the informant preferred a revision application and the same was allowed by the impugned order, dated 15.05.2014.

6. Learned Counsel, appearing on behalf of the petitioners, submits that admittedly there is a land dispute between the parties and due to enmity, this false case was lodged and the police, finding it not true, submitted final form. However, the learned Magistrate has taken cognizance. The witnesses proposed to be examined by the informant were never examined by the police during course of investigation and their statements have not been recorded under Section 161 of the Cr.P.C. Moreover, the informant never made any protest before the police authorities or the supervising authority of the investigation that statement of eye-witnesses were not recorded by the Investigating Officer. Only after submission of the final report by the police, a protest petition



was filed naming them as witnesses. These witnesses are tutored witnesses and the trial has not proceeded on a complaint case rather on the basis of the investigation, done by the police. These witnesses were never examined during investigation. So the case of the defence will be prejudiced and there is no availability of their earlier statements made before police to cross-examine or to test the veracity of their statements.

7. Learned Counsel, appearing on behalf of the petitioners, has placed reliance on a decision in case of ***Bipin Kumar Vs. State of Bihar***, reported in ***2009 (1) East. Criminal Cases 310***, in order to submit that similar was the circumstance in that case and so the Court directed the trial Court to examine the case diary, rather in that case, on the basis of complaint after submission of final form, the police had taken cognizance. In case of ***Bipin Kumar (supra)***, the Court directed to examine whether the witnesses, named by the complainant in the complaint petition, were examined by the police in course of investigation and whether their statement, under Section 161 Cr.P.C., was recorded. If the statements find place in the case diary only then witnesses are to be examined during the trial, if it is not then not requires to be examined. Learned Counsel further submits that though these witnesses have already been examined, so their evidence cannot be



considered.

8. Contrary to the submission advanced on behalf of the petitioners, learned Counsel, appearing on behalf of the opposite party No. 2, submits that the present application has become infructuous in the sense that all those four witnesses, directed to be examined by the impugned order, have already been examined and the case is fixed for examination of the accused persons under Section 313 Cr.P.C.

9. Having considered the rival submissions advanced on behalf of the parties, the Court finds that it is apparent that the witnesses, allowed to be examined by the revisional Court, were not examined by the police during investigation under Section 161 Cr.P.C., nor during the pendency of the investigation any complaint was filed by the informant before the supervising authority or any higher authority of the police during investigation against the Investigating Officer alleging eye-witnesses account are not recorded. However, the fact remains that the learned trial Court has already examined those four witnesses.

10. So in the sense the present matter has become infructuous. So far as the admissibility of the evidence of those witnesses is concerned, the same will be considered by the learned



trial Court at the time of passing of the judgment, considering the factual position that for the first time they were produced before the Court and their earlier statements were recorded by the police under Section 161 Cr.P.C.

11. With the aforesaid observation, this application stands disposed of.

(Arun Kumar, J)

Praveen-II/-

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