

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46177 of 2013

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

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Most. Amal Devi Wife Of Kusheshwar Mahto @ Shashi Mahto Resident Of
Village- Mahmadpur, P.S.- Town, District- Begusarai

.... Petitioner

Versus

1. The State Of Bihar
2. Jogi Sah Son Of Ram Swaroop Sah Resident Of Village- Mahmadpur,
P.S.- Town, District- Begusarai
3. Raj Kumar Sah Son Of Late Ram Swaroop Sah Resident Of Village-
Mahmadpur, P.S.- Town, District- Begusarai

.... Opposite Party

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Appearance :

For the Petitioner	:	Mr. Ashok Kumar, Advocate
For the O.P. No. 2	:	Mr. Randhir Kumar, Advocate
For the State	:	Mr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 12-07-2017

Heard learned counsel for the petitioner and
learned counsel representing opposite party no.2 and also
learned Additional Public Prosecutor for the state.

No one appears on behalf of the opposite
party no. 3 despite service of notice on him.

The petitioner, in the present case, is
aggrieved by the order dated 11.07.2013, passed by
learned Additional Sessions Judge, 5th, Begusarai in S. Tr.
No. 923/2008, by which the learned trial court was
pleased to close the prosecution case and proceeded to
record the statement of the accused under Section 313
Cr.P.C.



Learned counsel for the petitioner has placed the orders passed in the Sessions Trial and submitted that apparently the learned Additional Sessions Judge was in haste in closing the evidence of the prosecution inasmuch as without exhausting the remedies available under the provisions of the Code of Criminal Procedure to enforce the presence of the witnesses, the learned Additional Sessions Judge proceeded to close evidence of prosecution witnesses.

On the other hand, learned counsel for the opposite party no. 2 submits that before closing the prosecution evidence, the learned Additional Sessions Judge has taken all possible steps to procure the attendance of the Investigating Officer and the Doctor, however, when the prosecution witnesses did not turn up, the learned Additional Sessions Judge had no other option but to close the evidence of the prosecution.

This Court when asked the learned counsel for the opposite party no. 2 to point out the order by which the learned Additional Sessions Judge took steps to procure attendance of the witnesses in accordance with the provisions of the Code of Criminal Procedure, he could not point out any order showing the efforts on the part of the learned Additional Sessions Judge to procure the



attendance of the witnesses in accordance with law. There are orders showing that Dasti summons were issued to Investigating Officer, but whether the summons were served upon him, if he despite service of summons, failed to appear, then, what action was taken by learned Additional Sessions Judge, are missing.

Learned Additional Public Prosecutor also assailed the orders passed by learned Additional Sessions Judge referring to the order-sheets available on the record.

I have perused the records and I am of the considered opinion that the learned Additional Sessions Judge has acted in haste in closing the evidence of the prosecution. Before closing of evidence of prosecution, he should have followed the provisions as contained in the Code of Criminal Procedure for taking coercive action, if necessary, to procure the attendance of the witnesses. There are modes prescribed in the Code of Criminal Procedure to be invoked in the nature of the present case against the charge-sheet witnesses.

The learned Additional Sessions Judge has clearly erred in passing the impugned order. The impugned order dated 11.07.2013 in Sessions Trial No. 923/2008 is, therefore, set aside. The learned Additional



Sessions Judge-Vth Court, Begusarai shall proceed to pass necessary order in accordance with law to procure the attendance of the prosecution witnesses and shall ensure speedy trial from the said stage and in accordance with law.

This application is, accordingly, allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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