

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9003 of 2017

Arising Out of PS.Case No. -109 Year- 2008 Thana -NAWADA District- NAWADA

=====

Sukhdeo Chauhan son of Faudi Chauhan, resident of village- Kaniapar, P.S.-
Nawada, District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar.
 2. Baleshwar Chouhan son of Lalu Chauhan
 3. Basudeo Chauhan son of Lalu Chauhan
 4. Jitendra Chauhan son of Jagdish Chauhan
 5. Satiya Devi wife of Basudeo Chauhan
 6. Sakuntala Devi wife of Baleshwar Chauhan
- All resident of village - Koniya, P.S.- Nawada, District-Nawada.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Birendra Kumar, Advocate
For the State : Mr. Sanjay Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 03-08-2017

Heard learned counsel for the petitioner and learned counsel
for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed for quashing the order dated 10.01.2017 passed by the learned Session Judge, Nawada in Cr.Revision No.49 of 2016 arising out of Nawada P.S.Case No.109 of 2008 whereby the revision preferred against the order dated 11.05.2016 passed by the learned Additional Chief Judicial Magistrate-IV, Nawada has been rejected.

3. By the aforesaid order dated 11.05.2016, the learned



Additional Chief Judicial Magistrate-IV, Nawada has rejected the prayer of the petitioner to summon X-Ray report and X-Ray plate of the petitioner from Nawada Sadar Hospital. It has been submitted by the learned counsel for the petitioner that a case under Sections 147, 341, 323 and 504 of the Indian Penal Code was registered against opposite party nos.2 to 6 on 22.04.2008. On completion of investigation, the police submitted charge-sheet pursuant to which charges were framed on 05.12.2009. He has submitted that since the petitioner sustained fracture injury in his index finger, which was confirmed by the X-Ray report, a prayer was made before the court below to summon the X-Ray report and the X-Ray plate from the hospital. The said prayer has illegally been rejected by the learned Additional Chief Judicial Magistrate-IV, Nawada and the revision preferred by the petitioner against the said order has also been rejected erroneously vide impugned order dated 10.01.2017 by the learned Session Judge, Nawada.

4. On the contrary, learned counsel for the State has submitted that it would be manifest from perusal of the impugned order that the evidence on behalf of the prosecution was closed and the statement of the accused was taken under Section 313 of the CrPC on 01.11.2013. When the matter was fixed for final arguments, the informant filed a petition for summoning the investigating officer and



the doctor, who had examined the victim which was allowed by the court vide order dated 13.01.2014. Thereafter, the investigating officer and the doctor have also been examined and the doctor in his evidence has clearly stated fracture injury was found in the index finger of the informant. He has submitted that from perusal of the order it would be evident that the investigating officer had not collected the X-Ray report during investigation of the case. He has submitted that taking into consideration long delay caused in examination of the witnesses on behalf of the prosecution as also the fact that in his initial application filed under Section 311 of the CrPC, the petitioner had not prayed for summoning the X-Ray report and X-Ray plate, the learned Magistrate dismissed the application of the petitioner. The challenge to the order in criminal revision was also rejected for the said reason. He has submitted that this application is barred in view of the statutory provision prescribed under Section 397 of the CrPC.

5. I have heard learned counsel for the parties and perused the record.

6. I find substance in the submission of the learned counsel for the State.

7. The trial of the accused persons has prolonged for over eight years and at this stage it would not be proper to further delay the trial on the ground of summoning X-Ray report and X-Ray plate from



the hospital specially when the doctor has already been examined and the injury report has also been proved. The order impugned passed by the learned Session Judge, Nawada does not suffer from any illegality. Learned counsel for the State is also right in his submission that though the application has been filed under Section 482 of the CrPC, the same is in the nature of second revision, which is barred under Section 397(3) of the CrPC.

8. Accordingly, the application is dismissed.

9. The trial court is directed to conclude the trial expeditiously.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.08.2017
Transmission Date	08.08.2017

