

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25504 of 2016

Arising Out of PS.Case No. -150 Year- 2000 Thana -MUNGER COMPLAINT CASE District-
MUNGER

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Ajay Kumar Jha son of Late Suresh Chandra Jha, resident of village- Pirpainti Road, Near Old Telephone, Exchange, P.S.- Godda, District Godda, at present working as warrant Officer, 9 wing C/o 56 APO

.... Petitioner/s

Versus

1. The State of Bihar.
2. Smt. Sarita Mishra daughter of Late Braj Mohan Mishra, resident of Mohalla- Bara Bazar, P.S.- Kotwali, District Munger.
3. The Registrar, Judicial, Jharkhand High Court, Ranchi.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha, Advocate
: Mr. Pranav Kumar Jha, Advocate
For the State : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 21-08-2017

Heard Mr. Subodhd Kumar Jha, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor appearing for the State.

2. Despite valid service of notice upon opposite party no.2, the opposite party no.2 has neither appeared in person nor she is being represented through counsel.

3. By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short 'the CrPC'), the petitioner herein has prayed for quashing the order dated 17.02.2016 by which the applications dated 07.10.2015 and 15.12.2015 filed by the petitioner for expunction of evidence recorded before framing of charge and after framing of charge in connection with Complaint Case No.150 of 2000 have been rejected



by the court of Sub.Divisional Judicial Magistrate, Munger.

4. The opposite party no.2 had filed a complaint in the court of Sub Divisional Judicial Magistrate, Munger, vide Complaint Case No.150 of 2000, against the petitioner and others alleging therein that the petitioner being her husband and his relatives subjected her to cruelty in various ways for non-fulfilment of dowry. After examination of the complainant on oath and after recording the statement of witnesses under Section 202 of the CrPC, the court of Magistrate, vide order dated 09.05.2000, summoned the petitioner and three others to face trial for the offences punishable under Sections 498A, 323 and 384 of the Indian Penal Code.

5. Mr. Subodh Kumar Jha, learned counsel for the petitioner has submitted that the petitioner had moved before this Court in Cr.Misc. No.23058 of 2000 for transfer of the complaint case from Munger judgeship to Pakur judgeship as, at the relevant time, the petitioner was posted at Pakur in the Indian Air Force and this Court, vide order dated 13.11.2000, while issuing notice to the complainant- opposite party no.2 had stayed the further proceeding of the case pending before the court of Magistrate. He has submitted that though the stay order was communicated to the court of Magistrate, between the period 13.11.2000 and 10.09.2003, the pre-charge witnesses were examined on 01.10.2002, 05.11.2002 and 16.01.2003 and the charges were framed against the accused persons



on 04.03.2003. He has submitted that since pre-charge witnesses were examined during the period of stay granted by this Court, the entire proceedings of the complaint case, including the order by which charges were framed, stood vitiated. He has submitted that in the facts and circumstances of the case, the court of Sub Divisional Judicial Magistrate ought to have allowed the petitions filed by the petitioner and reverted the proceedings of the case back to the stage of evidence before charge. He has submitted that the court of the Sub Divisional Judicial Magistrate ought to have expunged the entire evidence recorded before charge and after charge.

6. Per contra, Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor appearing for the State has submitted that the application filed by the petitioner seeking transfer of the case from Munger judgeship to Pakur Judgeship was dismissed as withdrawn, vide order dated 10.09.2003, passed by the High Court of Jharkhand, Ranchi as, after re-organization of the erstwhile State of Bihar with effect from 15.11.2000, the Pakur District fell within the State of Jharkhand. He has submitted that since no prejudice causing failure of justice has been done to the petitioner and no objection in respect of recording of the evidence either before charge or after charge was raised by the petitioner at any point of time, raising of such objection at the fag end of the trial is not tenable in law.

7. Having heard the parties and perused the lower court



records, which have been summoned by this Court, vide order dated 02.05.2017, I find substance in the submissions of the learned Additional Public Prosecutor appearing for the State.

8. From perusal of the lower court records, it would be manifest that the order dated 13.11.2000 passed in Cr.Misc. No.23058 of 2000, whereby the proceedings in the court below was ordered to be stayed, was received in the court of Magistrate on 23.11.2000, but on 01.10.2002, 05.11.2002 and 16.01.2003 when pre-charge witness nos. 1 to 3, namely, Sarita Mishra, Brij Mohan Mishra and Rajesh Kumar Mishra were examined under Section 244 of the CrPC, no objection was raised by the petitioner before the trial Magistrate. Not only this, even on 04.04.2003 when charges were framed against the petitioner and three others, they did not raise any objection in this regard, but when the case was fixed for evidence after framing of charge on 13.06.2003 and the complainant had filed her attendance for evidence, for the first time, a plea was taken by the petitioner that by order of the High Court further proceedings of the trial of the complaint case had been stayed.

9. The learned trial judge having appreciated the submission of the learned counsel for the petitioner and having perused the order dated 13.11.2000 passed by this Court in Cr. Misc. No.23058 of 2000 immediately stayed the further proceedings of the case. Thereafter, the complainant produced the order dated



10.09.2003 passed by the High Court of Jharkhand whereby the aforesaid Cr. Misc. No.23058 of 2000 was dismissed. Having appreciated the arguments advanced on behalf of the complainant and having perused the order of the Jharkhand High Court, Ranchi in Cr.Misc. No.23058 of 2000, the learned Magistrate vide order dated 01.02.2004 directed the parties to proceed with the trial of the case.

10. From perusal of the lower court records, I further find that on 08.11.2004 evidence on behalf of the complainant was closed. I also find that the witnesses examined on behalf of the complainant were discharged after cross-examination by the defence. It would further be manifest that vide order dated 08.11.2004, the learned Magistrate directed the accused persons to be physically present on 29.11.2004 for recording their statements under Section 313 of the CrPC. After recording the statement of the accused persons on 29.11.2004, the trial court adjourned the case to 30.11.2004 for evidence on behalf of the defence. However, on 30.11.2004 the accused persons pleaded that they did not intend to examine any witness. Thereafter, the case was fixed for final arguments. Since then, the disposal of the case is being delayed on one ground or another as the parties are filing frivolous applications before the trial Magistrate as well as before the court of Session and this Court.

11. Taking into consideration the facts noted above, in my



considered opinion, filing of the present application on 17.06.2016 under Section 482 of the CrPC for expunction of the evidence led before the trial court is nothing but a sheer abuse of process of the Court. When the witnesses were examined before the trial Magistrate, the petitioner, who had filed Cr. Misc. No.23058 of 2000 before this Court, did not raise any objection. At that stage, it was for the petitioner to bring it to the notice of the court regarding the order dated 13.11.2000. When the petitioner brought it to the notice of the trial Magistrate, he immediately stayed the proceedings. The examination of witnesses after charge started only after the afore-stated Cr. Misc. No.23058 of 2000 seeking transfer of the case from one district to another got dismissed. Moreover, I am of the considered opinion that no prejudice causing miscarriage of justice has been done in this case by examining some witnesses before charge or after framing of charge when the proceedings of the court below was stayed. Raising of objection in this regard after thirteen years of dismissal of criminal miscellaneous application by filing a petition before this Court is totally misconceived.

12. Accordingly, the application is dismissed.

13. The Registry is directed to send back the lower court records forthwith.

14. The trial court is directed to proceed with the trial of the complaint expeditiously and conclude the same as early as possible,



preferably within four months from the date of receipt/production of
a copy of this order.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.09.2017
Transmission Date	03.09.2017

