

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53114 of 2013

Arising Out of PS.Case No. -110 Year- 2005 Thana -MUNGER COMPLAINT CASE District-
MUNGER

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1. Ramdeo Lal Son Of Late Munshi Lal Resident Of Village - Kaura
Maidan, P.S. Kasim Bazar, District - Munger

.... Petitioner/s

Versus

1. The State Of Bihar Null Null
2. Gopal Lal Son Of Late Ganga Lal Resident Of Village - Kaura Maidan,
P.S. Kasim Bazar, District - Munger, At Present Shastri Nagar, P.S. Kasim
Bazar, Distt. - Munger
3. Subhash Chandra Prasad Son Of Sri Bhupendra Prasad Yadav Resident
Of Maniya Chauraha, P.S. Kasim Bazar, District - Munger
4. Nagendra Prasad @ Nagendra Prasad S/O Late Budhu Prasad Katib
License No. 54/2002 District Registration Office, Munger
5. Ashok Kumar Chaudhary @ Ashok Kumar Son Of Kartik Lal
Chaudhary Resident Of Village - Mokshira, P.S. Kasim Bazar, District -
Munger
6. Abhimanyu Kumar Son Of Arjun Kumar Resident Of Kasim Bazar,
District - Munger
7. Sunil Kumar Bhagat @ Sunil Son Of Late Raj Kumar Bhagat Resident
Of Mohalla - South Shastri Nagar, Police Station - Kashim Bazar, District -
Munger

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur

For the Opposite Party/s : Mr. D.P. Tiwary (App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 25-01-2017 The petitioners have preferred this application under

Section 482 of the Code of Criminal Procedure for quashing order

dated 25.4.2013 passed in Complaint Case No.110C of 2005 by

Sri D.N. Bhardwaj, Judicial Magistrate Ist class, Munger, whereby

he has rejected the application dated 22.9.2011 and 17.12.2011

filed by the petitioner/complainant under Section 244 of the Code



of Criminal Procedure, for examining the additional witnesses had been rejected.

From perusal of the record, it appears that the case was pending for examination of the prosecution witnesses and thereafter the petition was filed on behalf of the complainant on 22.9.2011 as well as 17.12.2011 for adducing the additional witnesses as well as one witness Ajay Chandra Mishra , who was named in the complaint petition but he could not be examined as he was at Punjab for earning his livelihood. It further appears that the learned court below vide order dated 25.4.2013 rejected the prayer of the complainant to examine the aforesaid witness as additional witness.

The petitioner has filed the present application for quashing order dated 25.4.2013.

It has been submitted on behalf of the petitioner that so far witness, Ajay Chandra Mishra is concerned, he was named in the complaint petition but he could not be produced for evidence before the court as he was at Punjab to earn his livelihood and other witnesses were examined and he had filed an application for examination of some additional witnesses, as they are conversant with the facts of the case.

It has also been submitted that the prayer for their



examination had been rejected by the court below without appreciating the fact that so far prosecution case is concerned, it is the duty of the prosecution, to bring all the materials/evidence before the court, in order to get his case proved as well as the fact that the relevancy of witnesses can only be considered at the stage of trial and not at the stage of recording evidence.

Heard learned A.P.P., who has opposed the application on the ground that the learned Magistrate has passed the detailed order explaining all the facts and circumstances and also from the detailed order, it appears that the witnesses have got sufficient chance and in the year 2006 trial had been initiated and in the year, 2011-2012 , the applications were filed and further no reason has been assigned as to what was the necessity. It has also been submitted by the learned A.P.P. that in the complaint petition also five witnesses were mentioned, those five, except Sri Ajay Chandra Mishra, have been examined and after a such long delay, the present petition has been filed with an intention to delay the trial, as such the order passed by the Judicial Magistrate is just and proper and it does not require any interference.

Having heard both sides. From perusal of the impugned order as well as petition filed by the petitioner, it appears that in the petition dated 22.9.2011, names of five witnesses have been



mentioned, out of which one was typist, who is formal witness and about the other witnesses, it has been mentioned that they are conversant with the facts and circumstances of the case and could not be added in the list of witnesses in the complaint petition, hence, the supplementary list was filed and in the petition dated 17.7.2012 also, prayer has been made for examination of additional witness as one Ajay Chandra Mishra, who could not be examined as he was out of station and living in Punjab in connection with his livelihood and a plea has been taken that those witnesses are conversant with the occurrence.

It further appears from the order-sheet that evidences started in the case in the year 2006 and the petition has been filed in the year, 2011-2012 as such it appears that sufficient opportunity has been provided to the prosecution/complaint in this case for adducing evidence, secondly so far examination of additional witnesses is concerned, though it has been mentioned that they are conversant with the facts and circumstances of the case but their names are not mentioned in the complaint petition and even no steps had been taken by the petitioner to pray before the court earlier to call them as additional witnesses at the late stage after lapse of seven years addition of some witnesses does not appear to be just and proper as it may cause prejudice to the



defence.

From the impugned order, it appears that the learned Magistrate has discussed the matters in detail and he has dismissed the petition filed by the prosecution/complainant by a speaking order and there is no illegality in the impugned order.

Considering the facts as made above, I find no merit in this application, hence, this application is dismissed.

(Vinod Kumar Sinha, J)

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