

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43998 of 2014

Arising Out of P.S.Case No. -93 Year- 2011 Thana -BISFI District- MADHUBANI

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Neyaz Ahmad Son of Late Md. Munif Resident of Village - Noorchak Navtoli,
Police Station - Bisfi, District- Madhubani.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. M.S.Hoda, Advocate

For the Opposite Party : Mr. Sanjay Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-09-2017

This criminal miscellaneous application under Section 482 of the Cr.P.C. has been filed to quash the order dated 29.05.2013 passed by Adhoc Additional Sessions Judge-III, Madhubani in Sessions Trial No.650 of 2012. The learned court below as per impugned order refused to permit the petitioner to go abroad for performing the Haj pilgrimage.

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

3. The learned counsel for the petitioner submits that a petition was filed before the court below for permitting him to go to abroad for performing Haj. In this regard, an application was filed for procuring passport before passport agency. The passport agency as per letter dated 21.12.2012 (File No.-G002712/12) asked the petitioner to obtain no objection certificate from the Court in sesin of



Bisfi P.S.Case No.122 of 2007, Case No.93 of 2011 and Case No.60 of 2011. All the three cases were reported to be pending against the petitioner and so a petition was filed before one of the Court where his prayer of issuance of no objection was refused. It has further been submitted that the present case relates to the occurrence which took place in the year 2011. It is alleged that this petitioner caused hindrance in poll and assaulted the informant who was polling agent. The present case was registered against the petitioner and other co-accused on the Fardbeyan of informant for the offence under Sections 147, 148, 149, 447, 341, 323 and 307 of the IPC and 135A of Representation of People Act. After investigation, the police had submitted chargesheet on 31.08.2011. The court below framed charges on 05.11.2012 but till the date not a single witness has been examined for no fault of the petitioner. The petitioner is an old man aged about 56 years and on account of pendency of this case, the passport authority is not ready to provide him passport for going abroad. It has been submitted that one of the case bearing Bisfi P.S.Case No.60 of 2011 for the offence under Sections 341, 447, 323 and 504/34 of the IPC has been disposed of on compromise by the Lok Adalat. The third case bearing Bisfi P.S.Case No.122 of 2007 registered for the offence under Sections 147, 148, 149, 323, 341 and 504 of the IPC is pending in the Court of Additional Sessions Judge-III, Madhubani. In this case also charges were framed on 27.12.2012.



This case has also been compromise and a compromise petition has been filed by informant on 07.02.2014. Even after passing over a period of about five years, the prosecution has not produced a single witness and so on account of pendency of the case the petitioner is being unnecessarily harassed. The learned court below without assigning any cogent reason has rejected the prayer of the petitioner to issue no objection certificate. The court below has passed the impugned order in mechanical manner without applying judicial mind and the same may be quashed.

4. On perusal of this application, annexures and document produced on behalf of the petitioner, it appears that the charges were framed for about five years ago and since then not a single witness has been examined. It appears that the case is being adjourned in routine manner. The court below has not taken any effective steps for procuring the attendance of the witness. It further appears that the court below has rejected the prayer of the petitioner simply for the reason that the case is running for prosecution evidence and besides this case some other cases are also pending. The court below has not assigned any cogent reason for rejecting the prayer of the petitioner and so the same is not sustainable.

5. The Apex Court while expressing their anxiety in delay of trial before Lower Court has given direction for expeditious disposal of the cases. In a case reported in Raj Deo Sharma v. State of



Bihar AIR 1998 SC 3287 at para 16(iii) the Apex Court has given following direction:-

“If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the Court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the Court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reason to be recorded and in the interest of justice the Court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time limit.”

6. In the facts and circumstances as stated above and for the ends of justice the order dated 29.05.2013 passed by Adhoc Additional Sessions Judge-III, Madhubani is quashed and the matter is remitted back for fresh consideration on filing petition by the petitioner placing full facts. It is expected that the court below will pass order afresh considering the nature, facts and circumstance of the case and also taking effective steps to procure the attendance of the witnesses and expedite the trial in view of guidelines given by Apex Court (supra).

7. This criminal miscellaneous application is accordingly allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
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