

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35293 of 2013

Arising Out of PS.Case No. -43 Year- 2002 Thana -GHANSHYAMPUR District- DARBHANGA

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1. Govind Jha S/O Siyaram Jha R/O Village- Ganour, P.S.- Ghanshyampur,
District- Darbhanga.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Dev Chandra Jha S/O Sri Mandan Jha R/O Village- Ganour, P.S.- Ghanshyampur, District- Darbhanga.
3. Baij Nath Jha S/O Dashrath Jha R/O Village- Ganour, P.S.- Ghanshyampur, District- Darbhanga.
4. Shashi Nath Jha S/O Dashrath Jha R/O Village- Ganour, P.S.- Ghanshyampur, District- Darbhanga.
5. Shyam Jee Jha S/O Not Known R/O Village- Ganour, P.S.- Ghanshyampur, District- Darbhanga.
6. Mahadev Jha S/O Indra Kant Jha R/O Village- Ganour, P.S.- Ghanshyampur, District- Darbhanga.
7. Somnath Jha S/O Dashrath Jha R/O Village- Ganour, P.S.- Ghanshyampur, District- Darbhanga.
8. Sada Nand Jha S/O Nunulal Jha R/O Village- Ganour, P.S.- Ghanshyampur, District- Darbhanga.
9. D/O Nunu Lal Jha R/O Village- Ganour, P.S.- Ghanshyampur, District- Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vikram Deo Singh, Advocate
Mr. Kaushal Kumar Jha, Advocate
For the Opposite Party/s : Mr. Manish Kumar-2, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

5 17-04-2017 This criminal miscellaneous has been filed for quashing the order dated 12.04.2013 passed in Criminal Revision No. 69 of 2012 by the learned Additional District Judge, Benipur Darbhanga as well as order dated 30.08.2012 passed by learned Judicial Magistrate 1st Class, Biraul at Benipur arising out of Trial



No. 390 of 2012, G.R. No. 175 of 2002 whereby and whereunder criminal revision filed by the petitioner was dismissed confirming the order passed by the learned Judicial Magistrate whereby he has dismissed for joint trial of the case arising out of Ghanshyampur P.S. Case No. 42/2002 with Ghanshyampur P.S. Case No. 43/2002.

Heard the learned counsel for the petitioner, the learned A.P.P. for the State as well as learned counsel for opposite party Nos. 2 to 9.

On behalf of petitioner, it is submitted that Ghanshyampur P.S. Case No. 42/2002 and 43/2002 are case and counter case. The place of occurrence of both the cases are actually same. In Ghanshyampur P.S. Case No. 43/2002 time of occurrence is 10 A.M. while time of occurrence of Ghanshyampur P.S. Case No. 42/2002 is not mentioned in the First Information Report but from the time of reporting it reveals that both the cases are case and counter case. Decision of Hon'ble the Apex Court reported in *(2001) SCC 688* in the case of *Sudhir versus State* is fully applicable in this case. It is true that Ghanshyampur P.S. Case No. 43/2002 is fixed for judgment but till today the judgment has not been delivered and, as such, for the ends of justice that Ghanshyampur P.S. Case No. 43/2002 should be sent to the Court



of Session so that the judgment could be pronounced by the same court on the same date one after another. The place of occurrence in both the cases are the door. The learned Additional District Judge, Benipur, Darbhanga has not correctly appreciated the place of occurrence and has passed the impugned order. Ghanshyampur P.S. Case No. 42/2002 is being tried by Sessions Court whereas Ghanshyampur P.S. Case No. 43/2002 is being tried by Judicial Magistrate 1st Class. The petitioner filed petition under Section 323 of the Code of Criminal Procedure in Ghanshyampur P.S. Case No. 43/2002 to send that case before learned Sessions Judge because it is well settled principle of law that case and counter case should be tried by one and similar court. Ghanshyampur P.S. Case No. 42/2002 is lodged by informant Mahadeo Jha alleging that when he reached near the house of the accused Siyaram Jha all the accused suddenly started assaulting him. The fardbeyan of Ghanshyampur P.S. case No. 43/2002 is lodged by Govind Jha alleging that when he along with his father was repairing his Bhuskar which is near the door all the accused persons came there with lathi and started assaulting him. Thus, the place of occurrence in both the cases are near the door and are same. The time of occurrence is also same. Parties are same.

On the other hand, learned counsel appearing for



opposite party Nos. 2 to 9 submits that the evidences of both parties have already been recorded and Ghanshyampur P.S. Case No. 43/2002 is pending in the lower court was fixed for judgment. In the meantime, petitioners filed the petition under Section 323 of the Code of Criminal Procedure, which goes to show that intention of the petitioner was only to linger the case. The petition has been filed at belated stage and further the learned Additional Sessions Judge after finding the place of occurrence different, has rightly passed the order, dismissing the revision.

Admittedly, parties in both the cases are similar and similarly place of occurrence of both the cases is the same. There is slight difference in the place of occurrence. The time of occurrence also appears to be the same. It is well settled principle of law that judgment in case and counter case should be pronounced by one court. Admittedly, Ghanshyampur P.S. Case No. 42/2002 and Ghanshyampur P.S. Case No. 43/2002 are pending in two different courts and, therefore, in my view, learned counsel for the petitioner has rightly submitted that judgment in both the above said cases should be pronounced by one court since Ghanshyampur P.S. Case No. 43/2002 is triable by the court of Magistrate and the evidence by the parties has already been completed. In my view, the aforesaid case should be sent to the



Court of Session so that the Sessions Court would decide the aforesaid case along with Ghanshyampur P. S. Case No. 42/2002.

In view of the aforesaid facts and circumstances, this petition stands disposed of with the observation that Sri Kumar Sudhanshu, learned Judicial Magistrate 1st Class, Biraul, Darbhanga or his successor in whose court Ghanshyampur P.S. Case No. 43/2002 is pending shall commit the case to the Court of Session under Section 323 of the Code of Criminal Procedure and after commitment learned Sessions Judge, Darbhanga shall ensure that the aforesaid Ghanshyampur P. S. Case No. 43/2002 will go in the court in which Ghanshyampur P.S. Case No. 43/2002 is pending and furthermore, the same court shall pronounce the judgment in both the above said cases on the same date.

(Jitendra Mohan Sharma, J)

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