

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 1178 of 2016

Arising out of P.S. Case No. - null Year - null Thana - null District - BEGUSARAI

=====

Manoj Kumar, S/o Late Sadan Lal, R/o Village - Tetari, P.S. - Ballia, District – Begusarai

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Bihar, Patna
 2. The Director General of Police, Bihar, Patna
 3. The Inspector General of Police, Darbhanga Range, Darbhanga
 4. The Superintendent of Police, Begusarai
 5. Dr. Anil Prasad, In Charge Medical Officer, Primary Health Centre, Cheriabariarpur, District – Begusarai
- Respondents
- =====

Appearance :

For the Petitioner : Mr. Abhinay Raj, Advocate
Mr. Anukul Raj, Advocate

For the Respondents : Md. Nashrul Hoda Khan, S.C.-I

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT

Date: 03 - 02 - 2017

The sole petitioner Manoj Kumar is accused in connection with Cheriya Bariyarpur Police Station Case No. 177 of 2008, corresponding to G.R. No. 3368 of 2008 registered under Sections 409, 420, 467, 468, 469 and 471 of the Indian Penal Code. After investigation, the police has already submitted charge-sheet against the petitioner and the learned trial court has framed the charges on 04.11.2009 and the case is proceeding on trial.

2. Prayer of the petitioner is for a direction to the respondents to re-investigate the aforesaid police case. The prayer is on the ground that allegation against the petitioner is that he made certain interpolation in the referred cheques drawn in favour of the petitioner and added rupees one lakh before the words and figures twenty seven thousand and



in another cheque added rupees one lakh before the words and figures eighty two thousand six hundred eighty and in the third cheque added rupees one lakh before two thousand two only and, as such, withdrew the money just to wrongfully gain and cheat the prosecutors.

3. Submission of the petitioner is that, in fact, the cheques were drawn for the mentioned amount which would have been evident from the cash registers mentioning entry of the cheque numbers and the amount for which it was drawn as well as from the advance registers and the original cheques on which there is allegation of interpolation. Without the aforesaid documents, the police submitted charge-sheet and the trial is going on. His contention is that the petitioner had approached this Court for regular bail in Cr. Misc. No. 41297 of 2009 and by order dated 20.11.2009, this Court had directed the Senior Police Officials to review the matter themselves. In spite of that no progress took place, rather investigation did not proceed in the correct perspective and direction. Ultimately, the petitioner was allowed bail. Thereafter, the petitioner moved before the learned court below for postponement of the trial till investigation which was refused on 03.02.2010. Then the said order was challenged in Cr. Revision No. 51 of 2010 before the learned Sessions Judge, Begusarai. The same was heard and dismissed by the learned Additional Sessions Judge, Begusarai on 22.11.2010. Thereafter both the orders were challenged in Cr. Misc. No. 2711 of 2011 before



this Court under Section 482 Cr.P.C. The said application was also dismissed on 22.02.2016 and the learned trial court was directed to conclude the trial within a period of six months without granting unnecessary adjournment. Thereafter, the present criminal writ.

4. Learned counsel for the respondents submits that the stage of the case and previous litigation would reveal that there remains nothing to be done by issuance of any direction in exercise of this extraordinary jurisdiction. Submission is that lack of prosecution evidence would be taken care of by the learned trial court. Moreover, no one is going on to be prejudiced only due to non-collection of documentary evidences by the Investigating Officer. The prosecution is at liberty to bring those documents on the record during course of the trial. If those documents which are already in existence are not brought on the record, the accused would be entitled to the benefit of that and no prejudice is going to be caused nor a case of re-investigation is made out.

5. In **Pooja Pal vs. Union of India & Ors.** reported in **2016(2) PLJR 378**, the Hon'ble Supreme Court considered the earlier judgment in the case of **Zahira Habibulla H. Sheikh & Ors. vs. The State of Gujarat & Ors.** reported in **2004 (4) SCC 158** and in paras 50 and 54 of the judgment observed thus:-

“50. It was propounded that in a criminal case, the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole



community and are harmful to the society in general. That the concept of fair trial entails the triangulation of the interest of the accused, the victim, society and that the community acts through the State and the prosecuting agency was authoritatively stated. This Court observed that the interests of the society are not to be treated completely with disdain and as persona non grata. It was remarked as well that due administration of justice is always viewed as a continuous process, not confined to the determination of a particular case so much so that a court must cease to be a mute spectator and a mere recording machine but become a participant in the trial evincing intelligence and active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality both to the parties and to the community.”

“54. Referring to its earlier decision in Karnel Singh vs. State of M.P., (1995)5 SCC 518, it was reiterated that in a case of a defective investigation, the court has to be circumspect in evaluating the evidence and may have to adopt an active and analytical role to ensure that truth is found by having recourse to Section 311 of the Code or at a later stage also resorting to Section 391 instead of throwing hands in the air in despair. It recalled as well its observations in Ram Bihari Yadav vs. State of Bihar & Others, (1998)4 SCC 517 that the courts are installed for justice oriented mission and thus if a negligent investigation or omissions or lapses due to perfunctory investigation are not effectively rectified, the faith and confidence of the people would be shaken in the law enforcing agency and also in the institution devised for administration of justice.”



6. It is well settled that there is no bar for re-investigation after beginning of the trial, if the justice so demands. However, the de novo trial should be the last resort and that too only when such a course becomes desperately indispensable and should be limited to the extreme exigency to avert a failure of justice. Reference may be made to **State of M.P. Vs. Bhura Jee & Ors.** reported in **2002(7)SCC 679**.

7. In my view, the present one is not an exceptional case wherein re-investigation is essential. The only claim of the accused-petitioner is that the offences, alleged, are based on document and those documentary evidences have not been collected by the Investigating Officer. Those documents are materials and are already available. The prosecution is at liberty to bring the same on the record during course of trial.

8. Hence, I do not find any merit in this application. Accordingly, it stands dismissed with a direction to the learned trial court to conclude the trial, expeditiously, as directed earlier also.

(Birendra Kumar, J.)

Kundan

AFR/NAFR	
CAV DATE	25.01.2017
Uploading Date	03.02.2017
Transmission Date	03.02.2017

