

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.916 of 2014

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1. Ram Chandra Sah S/o Late Bhola Nath Sah R/o Village - Belwaganj,
P.S. - Laheriya Sarai, District - Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Vijai Kumar Singh S/o Ram Shreshta Singh R/o Village - Belwaganj,
P.S. - Laheriya Sarai, District- Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mahesh Prasad
With Mr. Shashi Shekhar
For the Respondent/s : Mr. Kumar Ranjit Ranjan, APP
For Opposite party No.2 : Mr. Suraj Naryan Yadav

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 02-03-2017

Heard learned counsel for the parties.

2. By the impugned order dated 20.09.2014, learned First Additional Sessions Judge, Darbhanga has rejected petitioner's application filed for adducing additional evidence.

3. There is no dispute about the fact that in relation to an occurrence, two First Information Reports were registered. Two trials arising out of the said two First Information Reports were held by the same trial Court. The petitioner was put on trial in the case arising out of Laheriasari P. S. Case No. 258 of 2009. He is informant of Laheriasarai P.S. Case No. 254 of 2009. Trial arising out of the case in which the petitioner was informant resulted into



conviction of Opposite party No.2. Similarly, the petitioner also stood convicted at the trial arising out of the case registered by the Opposite party No.2.

4. The petitioner and Opposite party No.2 preferred separate appeals giving rise to Appeal No. 26 of 2013 preferred by Opposite party No.2 and Appeal No. 25 of 2013 preferred by the petitioner. Both the criminal appeals were heard together. In the criminal appeal preferred by Opposite party No.2, the judgment was delivered on 01.09.2014. For reason unknown, no judgment was delivered in Criminal Appeal No. 25 of 2013 by the Court below. This Court presumes that it was because of this petitioner that his appeal was separated from the appeal preferred by the Opposite party No.2. This is for the reason that the petitioner filed an application subsequently on 16.09.2014 for adducing additional evidence.

5. Learned counsel for the petitioner has submitted that hearing of both the appeals had concluded on the same day but the judgment was delivered in Criminal Appeal No. 26 of 2013 and not in Criminal Appeal No. 25 of 2013. At the same time, he has withheld from the Court as to the circumstance in which the judgment was not delivered in the appeal preferred by the petitioner. I have already observed that since petitioner has withheld this information; the Court



has presumed that it was at the instance of the appellant that in his appeal, the judgment was not delivered.

6. The Court below has considered the petitioner's application and has rejected the same on the ground that the petitioner had sufficient opportunity to take this plea during the pendency of the appeal. He was given adequate opportunity for his defence at the trial.

7. Learned counsel appearing on behalf of the petitioner has attempted to persuade this Court that injury report in relation to the injuries on the person of the informant was required to be exhibited as additional evidence which has been exhibited in the trial arising out of the criminal case registered by the petitioner. According to him, said evidence is necessary for just adjudication of the appeal preferred by the petitioner. He has placed reliance on Supreme Court's decision in case of **Ashok Tshering Bhutia Vs. State of Sikkim** reported in **(2011) 4 SCC 402**, with special reference to paragraphs 28 to 32.

8. Before advertng to the said Supreme Court's decision , I must take note of Section 391 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the **Code**), which reads thus:-

"391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and



may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

9. It is evident from Section 391 of the Code that it is the discretion of the appellate Court to allow taking additional evidence or directing the trial Court to take evidence if he thinks it necessary. The manner in which the said discretion has been exercised by the Court below cannot be said to be unjustifiable. In its decision in case of **Ashok Tshering Bhutia** (supra), the Supreme court has laid down that power under Section 391 of the Code must be exercised sparingly and only in exceptional and suitable cases where the Court is satisfied that directing additional evidence would serve the interests of justice. The Supreme Court has held that it would depend upon the facts and circumstances of the individual case as to whether such permission should be granted having due regard to the concepts of fair play, justice and the well being of society. The Court in clear term



held that such an application for taking additional evidence must be decided objectively. Paragraph 29 of the said decision is relevant, which reads thus:-

"29. The primary objection of the provisions of Section 391 Cr.P.C is the prevention of a guilty man's escape through some careless or ignorant action on part of the prosecution before the Court or for vindication of an innocent person wrongfully accused, where the Court omitted to record the circumstances essential to elucidation of truth. Generally, it should be invoked when formal proof for the prosecution is necessary. (Vide Rajeshwar Prasad Misra V. State of W. B. 19, Ratilal Bhanji Mithani V. State of Maharashtra, 20, Rambhau V. State of Maharashtra, 21, Anil Sharma V. State of Jharkhand, 22, Zahira Habibulla H. Sheikh V. State of Gujarat, 223 and Monu Sharma V. State (NCT of Delhi) 24)."

10. In paragraph 32, the Supreme Court has summarized the law as follows:-

"32. In view of the above, the law on the point can be summarized to the effect that additional evidence can be taken at the appellate stage in exceptional circumstance, to remove an irregularity, where the circumstances so warrant in public interest. Generally, such power is exercised to have formal proof of the documents, etc. just to meet the ends of justice. However, the provisions of Section 391 Cr.P. C. cannot be pressed into service in order to fill up lacunae in the prosecution case."

11. Coming back to the order impugned, the Court below has rightly observed that each trial has to be decided on the basis of evidence adduced at that trial.



12. I do not find any reason to interfere with the order.

13. This application is, accordingly, dismissed.

ArunKumar/-

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(Chakradhari Sharan Singh, J)

