

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.371 of 2016

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1. Shailendra Kumar son of Sri Rajendra Prasad resident of village :
Nanand, P.S.: Silao, District : Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Premchandra Yadav

For the Respondent/s : Mr. P.K.Chaurasiya(App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL JUDGMENT & ORDER

9 07-04-2017

Heard learned counsel for the parties.

2. It would be apt to take note of certain essential facts of the case before referring to the purpose for which present criminal revision application has been filed by the petitioner, who has been put on trial in Sessions Trial No. 153 of 2004 arising out of Silao P. S. Case No. 195/2002.

3. Said Silao P.S. Case No. 195 of 2002 was registered on 15.06.2002, for the offences punishable under Sections 302, 120B read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act. In the First Information Report following seven persons including the petitioner were made accused:-

- “(1) Anil Kumar
- (2) Vedanand alias Vedo
- (3) Awadhesh Kumar
- (4) Umesh Prasad
- (5) Shambhu Kumar alias Niwash Kumar
- (6) Vijay Kumar and



(7) Shailendra Kumar”

4. Upon completion of investigation, the police submitted charge-sheet against four persons, namely, Vedanand alias Vedo, Shambhu Kumar alias Niwash Kumar, Vijay Kumar and Shailendra Kumar and kept investigation pending against rest three accused persons, namely, Anil Kumar Engineer, Umesh Prasad and Awadhesh Prasad.

5. Evidently, so far as this petitioner is concerned, charge-sheet was submitted against him on 15.10.2002. Based on charge-sheet submitted by the police, learned Chief Judicial Magistrate, Bihar Sharif took cognizance of the offence punishable under Sections 302, 120B read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act by an order, dated 16.10.2002 against all the charge-sheeted accused persons as has been noted above. Their case was separated from those against whom the investigation by the police was kept pending. Their case was transferred to the Court of learned Judicial Magistrate, First Class, Bihar Sharif for commitment.

6. Subsequently, the police submitted final form with respect to rest of the three persons named as accused in the First Information Report and against whom investigation was kept pending, showing them innocent. The said final



form bearing No. 16 of 2003 was submitted on 14.03.2003. It appears that on the same day, the Investigating Officer of the said Silao P. S. Case No. 195 of 2002 applied before the learned Chief Judicial Magistrate for further investigation in view of certain significant developments in the investigation of another Parwalpur P. S. Case No. 62 of 2003. In said Parwalpur P. S. Case No. 62 of 2003, the accused of that case Vikash Mahto @ Shailesh Mahto @ Lallu Mahto is said to have made confessional statement in relation to commission of offence, which was subject matter of Silao P. S. Case No. 195 of 2002. Learned Chief Judicial Magistrate, Nalanda at Bihar Sharif, allowed the police to go for further investigation. Based on further investigation, the police submitted charge-sheet dated 22.05.2003 on 27.05.2003 against said Vikash Mahto @ Shailesh Mahto @ Lallu Mahto under Sections 302, 120B read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, closing the investigation. Based on the second charge-sheet submitted on 22.05.2003, the learned Chief Judicial Magistrate took cognizance of the offence against the charge-sheeted accused, namely, Vikash Mahto @ Shailesh Mahto @ Lallu Mahto and Munna Kumar Mahto. The Court decided not to proceed against the rest three named first Information Report accused persons, namely, Anil Kumar Engineer, Umesh Prasad and Awadhesh



Prasad for want of sufficient material. The case was transferred to the Court of learned Judicial Magistrate, First Class, Nalanda at Bihar Sharif for taking further steps. Subsequently, a criminal Revision application bearing Criminal Revision No. 125 of 2004 was preferred against the cognizance order, dated 23.02.2004 passed by learned Chief Judicial Magistrate with a prayer to proceed against the rest three accused persons against whom no charge-sheet was submitted. Learned Additional Sessions Judge VII, Nalanda at Bihar Sharif, by an order, dated 03.12.2004 set aside the order, dated 23.02.2004 and asked the learned Chief Judicial Magistrate to pass an order afresh.

7. Against the order, dated 03.12.2004, passed in Criminal Revision No. 125 of 2004, an application under Section 482 of the Code of Criminal Procedure was filed before this Court being Criminal Miscellaneous No. 2683 of 2005 and this Court by order dated 17.03.2005, stayed further proceeding in Silao P. S. Case No. 195 of 2002.

8. Criminal Miscellaneous No. 2683 of 2005 was disposed of by this Court more than a decade ago and fresh order, on remand was passed in Criminal Revision No. 125 of 2004 on 20.09.2005. The order taking cognizance, dated 23.02.2004 was upheld. As has been indicated above, by said order, dated 23.02.2004, cognizance was taken against



Vikash Mahto @ Shailesh Mahto @ Lallu Mahto and Munna Kumar Mahto. It appears from the records of the case that said Vikash Mahto @ Shailesh Mahto @ Lallu Mahto is no more. The other accused Munna Mahto @ Munna Kumar was allowed bail. Subsequently, his bail was cancelled by an order of this Court, dated 21.12.2006, passed in Criminal Miscellaneous No. 16051 of 2006.

9. Based on the first charge-sheet submitted by the police against accused persons including this petitioner, after commitment of the case, the trial commenced being S. T. No. 153 of 2004. For one reason or the other, the case based on subsequent charge-sheet was not committed to the Court of Sessions. In Sessions Trial No. 153 of 2004, examination of the witnesses came to be closed. The petitioner filed an application on 10.10.2015 before the Court below making a request not to close examination of the witnesses and call all the witnesses to be examined for their examination, whose names are mentioned in supplementary charge-sheet/ case diary of the same case. The said application, dated 10.10.2015 has been dismissed by order, dated 08.02.2016 passed by learned 7th Additional Sessions Judge, Nalanda in Sessions Trial No. 153 of 2004, which is under challenge in the present proceeding.

10. It is the case of the petitioner that entire



case of the prosecution has taken a major twist with submission of supplementary charge-sheet against Vikash Mahto @ Sailesh Mahto @ Lallu Mahto and Munna Kumar Mahto, who are said to have killed the deceased and, therefore, the witnesses of the second charge-sheet should be called by the Court for their examination and cross-examination in Sessions Trial No. 153 of 2004.

11. At the time of hearing of the case, when it was brought to my notice that the case on the basis of supplementary charge-sheet, though submitted on 23.02.2004 was not even committed to the Court of Sessions for trial, by an order, dated 25.01.2017, I asked the learned Sessions Judge, Nalanda at Biharsharif, to submit a report explaining the circumstance as to why said case has not been committed.

12. Learned Sessions Judge, Nalanda at Biharsharif, has, accordingly, submitted a report to this Court dated 06.02.2017 from which most of the facts as discussed above, have been taken. From the said report, it transpires that only after passing of the order, dated 25.01.2017, the Court below started inquiring about commitment of the case based on supplementary charge-sheet. The committing Court, till that date was not aware of passing of the order, dated 20.09.2005 in Criminal Revision No. 125 of 2004,



whereby cognizance order, dated 23.02.2004 passed by the learned Chief Judicial Magistrate was upheld. He was not knowing that bail of accused Munna Kumar Mahto has already been cancelled by the High Court in the year 2006 and commitment of the case was due. He adjourned the case to 06.02.2017 for commitment issuing non-bailable warrant against the said accused Munna Mahto alias Munna Kumar. Curiously, on 06.02.2017, the said Munna Kumar alias Munna Mahto was produced by the police before learned A.C.J.M, IV, with a report regarding death of other accused Vikash Mahto @ Shailesh Mahto @ Lallu Mahto. The case has, accordingly, now been committed to the Court of Sessions on 06.02.2017.

13. The facts narrated above exhibit indifference at all levels, which resulted into delay in commitment of the case based on supplementary charge-sheet. I had thereafter wanted to know as to the Court to which the case based on supplementary charge-sheet on commitment has been sent. In response to an order passed by this Court, dated 16.03.2017 requiring the petitioner to file an affidavit, as regards status of both the trials arising out of two charge-sheets submitted in connection with Silao P. S. Case No. 194 of 2002, a supplementary affidavit has been filed on behalf of the petitioner. It transpires that the case based on supplementary charge-sheet after having been committed to



the Court of sessions has been numbered as S. t. No. 87 of 2017, records of which have been sent to the Fast Track Court No.I of Nalanda, where Sessions Trial No. 153 of 2004 based on first charge-sheet is pending As has already been noted above, the evidence in Sessions Trial No. 153 of 2004 is going on.

14. Reverting back to the prayer made on behalf of the petitioner, now he wants the prosecution witnesses, whose names have been mentioned in the second charge-sheet to be examined as prosecution witnesses in the first trial, viz, S. T. No. 153 of 2004. His plea is based on the background fact that arising out of the same occurrence and same First Information Report, two charge-sheets have been submitted by the Police leading to commencement of two separate trials. It is, accordingly, his case that witnesses of the second charge-sheet are material witnesses for the purpose of S. T. No. 153 of 2004, which prayer has been turned down by the Court below by the order, which is impugned in the present application. In my view, such prayer cannot be acceded to. A trial has to be decided on the basis of evidence in that trial.

15. In the peculiar facts and circumstances of the present case, however, I direct the Court below to conclude the trial of Sessions Trial No. 153 of 2004 first and without



delivering judgment in first case proceed with the Sessions Trial No. 87 of 2017. After evidence in Sessions Trial No. 87 of 2017 is closed and arguments are over, the Court below shall deliver judgment in both the cases.

16. The petitioner shall be at liberty to examine defence witnesses in Sessions Trial no. 153 of 2004, before arguments begin in that case.

17. This application stands disposed of with the observation as above.

(Chakradhari Sharan Singh, J)

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