

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 1688 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

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Appu Singh alias Pushkar, Son of Prabhunath Singh, Resident of Village Narwan,
Police Station Manjhi, District Saran at Chapra

.... Petitioner

Versus

1. The State of Bihar, through the Secretary, Law Department, Old Secretariat Building, Bihar, Patna
2. The Registrar, District Court Saran at Chapra

.... Respondents

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Appearance :

For the Petitioner : Mr. Ramakant Sharma, Sr. Advocate
Mr. Ambuj Nayan Choubey, Advocate
Mr. Prashant Kumar, Advocate
Mr. Animesh Kumar, Advocate
For the Inform./Interv. : Mr. Vishwanath Prasad Singh, Sr. Advocate
Mr. Sanjay Kumar Singh, Advocate
For the State-Res. : Mr. Sunil Kumar Mandal, S.C. 3
Mr. Arjun Prasad, A.C. to S.C. 3

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 27-11-2017

Heard learned counsel for the parties.

2. The petitioner is an accused in Sessions Trial No. 384 of 2012 arising out of Manjhi P.S. Case No. 112 of 2011. Presently pending in the Court of learned Fast Tract Court No. 1, Saran at Chapra.

3. By Administrative Order No. 107 G/17, dated 28.04.2017, the learned Sessions Judge, Saran at Chapra has transferred the said record to the Court of learned Fast Tract Court No. 1, Saran at Chapra.

4. The said order is under challenged on the ground that the learned Sessions Judge can transfer the trial only before the start of the hearing in view of the provisions of Section 409(2) of the Code of Criminal Procedure (in short the 'Cr.P.C.'). In the present case, the case



was at the stage of final argument when the same was transferred from the Court of learned Sessions Judge to the Court of learned Fast Tract Court No. 1, Saran at Chapra. Hence, it was completely illegal order of the learned Sessions Judge.

5. It is common experience that Sessions Judges transfer cases in the Administrative side for different reasons including for the reason that any Court where case is pending is vacant or for the reason that a new Court has joined without any case records in that Court or to maintain equal distribution of work. Recently certain Fast Track Courts were created at different Judgeship. Hence, Administrative Order of the learned Sessions Judge cannot be questioned with the aid of Section 409 of the Cr.P.C. which reads as follows:-

“409. Withdrawal of cases and appeals by Sessions Judges.---- (1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to, any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him.

(2) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, as Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

(3) Where a Sessions Judge withdraws or recalls a case or appeal under sub-section (1) or sub-section (2) he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another Court for trial or hearing, as the case may be.”



6. The past progress of the present sessions case would reveal that the case was pending before the learned Additional District Judge, Saran at Chapra on initial allocation of the case on 19.06.2013. The charges were framed thereat and thereafter the case was transferred to the Court of learned Additional District Judge-V on 25.08.2014. Again the record was transferred by Administrative Order of the learned District Judge dated 13.01.2016 to the Court of learned Additional District Judge-VI, Saran at Chapra. In that Court also the case was running for prosecution evidence. Later on, on 31.03.2016 again the case was transferred to the Court of learned Additional District Judge-IX, Saran at Chapra when the case was at the stage of defence witness. Subsequently, on 13.05.2016, the case was transferred to the Court of learned Additional District Judge-II, Saran at Chapra. On 05.12.2016 it was transferred to the Court of learned Additional District & Sessions Judge-VIII and lastly on 23.12.2016 it was recalled to the file of learned Sessions Judge, Saran at Chapra and finally by the impugned Administrative Order, the same was transferred to the learned Fast Tract Court No. 1, Saran at Chapra. All transfers were by the Administrative Orders and none of the parties ever challenged any orders passed by the learned Sessions Judge on any ground.

7. Now the petitioner has challenged the aforesaid order mainly for the reason that the Senior Counsel appearing for the petitioner



has some reservations against the Presiding Officer due to some statements uttered by the Presiding Officer, fully detailed in the affidavit filed by the learned Advocate on record of sessions case and produced through supplementary affidavit.

8. Submission of the learned counsel for the petitioner is that the matter be remitted back to the learned Sessions Judge with direction to dispose of the case himself and not to transfer the record to any other Court.

9. Learned counsel for the informant submits that the conduct of the petitioner would reveal that the petitioner has adopted a delaying tactic in the matter. The record was transferred to the learned Fast Tract Court on 28.04.2017. When the argument was going on, the writ application was filed on 13.09.2017 after such a belated stage without approaching the appropriate forum under the Cr.P.C. for retransfer of the case to some other Court.

10. He further submits that in the main writ application, there is no allegation against the Presiding Officer and entire thing has been concocted subsequently, when this Court was not inclined to grant any relief to the petitioner. However, the informant has no objection if the matter is retransferred to the learned Sessions Judge for early disposal.

11. After hearing the parties and considering the entire facts and circumstances, for substantial justice, let the aforesaid Sessions Trial



be transferred to the Court of learned Sessions Judge, Saran at Chapra with direction to conclude the trial within three months from the date of receipt/production of a copy of this order. The learned Sessions Judge is further directed not to transfer the case to any other Court in future as the case is ripe for final judgment.

12. With the aforesaid observation, this application stands disposed of.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	29.11.2017
Transmission Date	29.11.2017

