

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13675 of 2018

Arising Out of PS. Case No.-84 Year-2007 Thana- CHAPRA RAIL P.S. District- Saran

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Ashok Kumar Yadav @ Ashok Kumar, Son of Late Shkhdeo Yadav, Resident
of Village- Semariya Tola, Pahiya, P.S.- Rivilganj, District- Saran.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Singh
For the Opposite Party/s : Mr. Smt. Indu Bala Pandey

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 04-04-2018 A supplementary affidavit has been filed on
behalf of the petitioner.

Let it be taken on record.

The petitioner who is the informant of Chapra
Rail (G.R.P.S. Chapra) P.S. Case No. 84 of 2007 dated
18.10.2007 instituted for offences under Sections
498(A), 304(B)/201/34 of the Indian Penal Code and
Sections 3, 4 of the Dowry Prohibition Act, seeks
transfer of the Sessions Trial No. 478 of 2016 which
arises out of the case referred to above, from the court
of the learned Additional Sessions Judge-IX, Saran at
Chapra to any other court of the competent/equivalent
jurisdiction in the same judgeship.

The reason for seeking such transfer is that the
petitioner/informant who is the uncle of the deceased



does not have faith in that court viz. learned Additional Sessions Judge-IX, Saran at Chapra and that also for the reason that the court had, earlier granted provisional bail to two of the accused persons even though the bail of one such accused person was rejected by the Supreme Court of India.

The second ground for having no confidence over the trial court is that some of the documents which have been exhibited on behalf of the defence were not public documents and without noticing the petitioner/prosecution/informant, such documents were exhibited.

Apart from this, the further cause of suspicion of the petitioner about not getting justice in the case is that the court is showing extreme haste in concluding the trial.

A petition was filed by the prosecution before the learned Sessions Judge seeking transfer of the case from the court of the learned Additional Sessions Judge-IX, Saran at Chapra to any other court of competent jurisdiction. The learned Sessions Judge, Saran at Chapra vide order dated 06.02.2018 passed in Cr. Miscellaneous No. 3 of 2018 rejected such prayer after perusing the records and seeking a report from the concerned trial judge. The learned Sessions Judge was of



the view that the trial court was proceeding with the trial of the case in all earnestness as there was a direction from the High Court by order dated 28.06.2016 passed in Cr. Misc. No. 23868 to proceed with the case on a day-to-day basis and dispose of the trial at the earliest.

Mr. Mukesh Kumar Singh, learned advocate appearing for the petitioner however has submitted that the learned Sessions Judge, while rejecting the prayer of the petitioner for transferring the trial from the court of the learned Additional Sessions Judge-IX, Saran at Chapra, did not advert to the grounds which were taken by him in the petition seeking transfer.

By way of supplementary affidavit the petitioner has brought on record the application which was preferred before the Sessions Judge for seeking transfer of the trial.

From the perusal of the petition referred to above, it appears that only the aforesaid three grounds were taken viz; (I) one of the accused persons was granted provisional bail for sometime, (II) the documents were exhibited without giving any opportunity to the petitioners/prosecution to protest against the marking of the same and that (III) undue haste was being shown by the trial court for concluding the case.

True it is that two of the grounds mentioned in



the petition has not been adverted to by the learned Sessions Judge, but this Court, considering that the petitioner has shown lack of faith in the trial judge, has taken care to go through the records with caution and circumspection.

From the counter affidavit filed on behalf of the opposite parties it appears that the main accused of this case was granted provisional bail on the ground of marriage in the family. The provisional bail was granted from 03.02.2017 to 20.02.2017 but with the condition that one of the bailors would be a close relative and that the accused shall make it convenient to appear on all dates thereafter. This, in the opinion of this Court, cannot be a ground for raising any suspicion over the manner in which the trial is being conducted.

The documents which have been exhibited on behalf of the defence viz. H, J, J/1, L, L/1 and M are all public documents. Ext. J is certified copy of the charge sheet no. 81 dated 04.07.1985 submitted in Bhagwan Bazar P.S. Case No. 55 of 1985. Similarly, Ext. J/1 is the certified copy of the charge sheet of Bhagwan Bazar P.S. Case No. 54 of 1985. Ext. L is the certified copy of the B.P. NO. 572 of 2015 preferred before the learned Sessions Judge, Saran on behalf of opposite party no. 2. Ext. L/1 is the photocopy of the certified copy of the



order dated 15.05.2009 passed by the learned Sessions Judge, Saran at Chapra by which the anticipatory bail of the other accused persons was rejected. Ext. M is the certified copy of the requisition dated 25.05.2017 calling for a report regarding bail petition of the year 2009, for the purposes of its destruction. These documents are public documents and no objection ought to be raised by the prosecution over exhibiting of such documents.

It further appears that there has been delay on the part of the prosecution to have the case finally disposed of. In this case, charges were framed on 24.10.2016 whereafter, with considerable delay, witnesses were examined. After the prosecution witness no. 8 was examined on 04.02.2017, attempt was made by the prosecution to delay the conclusion of the evidence. A petition was filed by the prosecution for challenging some order passed by the trial court before the High Court but no such petition was filed in the High Court. Thereafter also, other applications were filed before the trial court, the rejection of which led to filing of petitions in the High Court but such petitions have not yet been disposed of and no effort has been taken to have them listed and disposed of. The case of the prosecution, after examination of 15 prosecution witnesses on 24.07.2017 was closed on 03.08.2017.



Thereafter again a petition was filed under Section 311 of the Code of Criminal Procedure for summoning one person to be examined as a witness in this case. That petition also was rejected by the trial court on 30.08.2017.

After the recording of the statement under Section 313 Cr.P.C. of all the accused persons, the defence examined its witnesses. After the closure of the defence case, another petition was filed on 17.11.2017, seeking transfer of the case which was rejected by the learned Sessions Judge as has been referred to above.

This Court, therefore, is of the view that the allegations which have been made against the trial court is highly presumptuous and there does not appear to be any ground for transferring the case from the court of the learned Additional Sessions Judge-IX, Saran at Chapra to any other court of competent jurisdiction.

True it is that justice is not only to be done but it should be seen to be done but this principle cannot be stretched to an absurd limits. If allegations are raised against a trial court or a judge conducting any proceeding without there being any basis, such suspicion in the mind of a litigant ought not to be entertained or else the morale of the judiciary would be sent to a low ebb, which would not neither be beneficial or for the



litigants for the justice dispensing system.

The concerned trial court has received evidence and there is no reason for this Court to come to the conclusion that his conduct as a trial judge was not or far from satisfactory.

No good ground has been made out by the learned counsel for the petitioner for transferring the case from the court of the learned Additional Sessions Judge-IX, Saran at Chapra to any other court of competent jurisdiction.

The petition is dismissed.

(Ashutosh Kumar, J)

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