

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Revision No.357 of 2015**

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

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1. Mira Devi Wife of Mahanand Bishwas Resident of Village - Kharhat, P.S. -  
Raniganj, District - Araria.

.... .... Petitioner/s

Versus

1. The State of Bihar.  
2. Rakesh Kumar @ Gholta Son of Murli Bishwas Resident of Village - Kharhat,  
P.S. - Raniganj, District - Araria.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sunil Kumar, Advocate

For the Respondent/s : Mr. Sanjay Kumar Sharma, APP

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**

**C.A.V. JUDGMENT**

**Date: - 10-2018**

1. This revision application has been preferred by the petitioner revisionist against the judgment dated 24.03.2012 passed in Sessions Trial No. 883 of 2010/Trial No. 043 of 2010 arising out of Raniganj P.S. Case No. 187 of 2009, by Shri Jitendra Nath Singh, Additional Sessions Judge, Fast Track Court, Court No. IV, Araria, whereby, the learned Trial Court has acquitted the opposite party no. 2 from the charges levelled against him under Section 366A of the Indian Penal Code.

2. Ground for assailing the judgment of Trial Court is that the informant of the case, who is mother of the victim girl and father of the victim girl has not been examined and even the Investigating



Officer has not been examined and no notice or summon or warrant of arrest either bailable or non – bailable has ever been served on the informant or on her husband and as such without notice or summon or the warrant of arrest on the informant and her husband and without recording the evidence of informant, the father of victim girl and the Investigating Officer, who are the important witnesses specially when the victim girl is still traceless, the trial has been closed and the accused person has been acquitted, which is against the provision of law and on the ground itself, the judgment of trial court is liable to be set aside

3. The opposite party no. 2 has appeared through his counsel and filed the counter affidavit stating therein that husband of the informant is an employee of Bihar Military Police at Patna and neither he came at his house after hearing about the occurrence nor he was present at the time of filing of the case, which clearly goes to show that he was not interested in filing the case and his statement under Section 161 Cr.P.C. has been recorded before the police after lapse of three months. Further case of opposite party no. 2 is that in this case, there is deliberate laches on the part of the informant, which will appear from the following facts (A) The order of issuing summons against the prosecution witnesses was issued on 02.08.2010 by the learned trial court. (B) the prosecution witnesses were absent



on 16.08.2010, 1.9.2010, 16.9.2010, 7.10.2010, 2.11.2010, 30.11.2010 and 7.12.2010 on each date, the Additional Public Prosecutor was also directed to produce prosecution witnesses. (C) the learned trial court again directed the office to issue summons against the prosecution witnesses on 7.12.2010 then a time petition was filed on behalf of the prosecution witnesses on 13.12.2010 and P.W. 1 Gopal Bishwas was examined and cross examined on 27.12.2010. (D) On 29.12.2010, the prosecution witnesses were absent but on 3.1.2011 P.W. 2 Kashi Nath Bishwas was examined and cross examined and on 4.1.2011 P.W. 3 Jagarnath Bishwas and on 5.1.2011 P.W. 4 Udyanand Bishwas were examined and cross examined. (E) On 12.01.2011 the APP as well as the prosecution witnesses were absent then bailable warrants were issued against the rest prosecution witnesses on 12.01.2011. On 24.01.2011, the Public Prosecutor was on leave. The prosecution witness was absent on 2.2.2011 and on 3.2.2011 and 23.2.2011 P.W. 5 Premlal Bishwas was examined and cross examined. (F) On 4.3.2011, the prosecution witness was absent and on 18.3.2011 P.W. 6 namely Md. Tauhid Alam was examined and cross examined on 3.5.2011. (G). On 17.04.2011, the A.P.P. filed time petition on behalf of the prosecution witnesses. (H) on 19.05.2011, order for issuance of non bailable warrants against the rest of the witnesses was passed by the learned Trial court. (I) On 10.06.2011, 28.06.2011, 12.07.2011,



03.08.2011, 18.08.2011, 16.09.2011, 20.09.2011, 19.10.2011, 14.11.2011 and 16.11.2011, the then learned Trial Court ordered to issue non-bailable warrant to the informant and also directed to issue D.O. letter for witnesses to the S.P. (J) On 30.11.2011 and 20.12.2011, the prosecution witnesses were absent then order of issuance of non bailable warrant against them was passed on 4.1.2012 against the prosecution witnesses and when the prosecution witnesses were absent, then reminder was issued to S.P. (K) On 18.01.2012, 31.01.2012, 27.02.2012 and 20.03.2012, the prosecution witnesses were again absent then the evidence was closed on 20.03.2012.

4. Further case of opposite party no. 2 is that the aforesaid facts clearly go to show that sufficient adjournments had been given for examination of informant and the rest of the prosecution witnesses and when they did not turn up, the evidence was closed and on 22.3.2012 /23.03.2012, attendance of both sides was given and both sides argued at length. It is also the case of opposite party no. 2 is that all the witnesses except P.W. 6 has been declared hostile and P.W. 6 is a formal witness and the Trial Court finding no legal evidence available on record, has acquitted the opposite party no. 2/accused from the charge levelled against him.

5. Learned counsel for the revisionist – petitioner has confined his argument to the extent that though the summons and



bailable and non bailable warrants were issued but there is no compliance report or service report available on record and without the same, the case has been closed, which is against the provisions contained in Code of Criminal Procedure and it appears from the photocopy of ordersheet filed by the opposite party no. 2 as Annexure –A to the second counter affidavit that summons were issued on 7.12.2010 and 12.1.2011 and it appears that P.W. 1 to P.W. 4 were examined and cross-examined. Thereafter, the bailable warrants were issued against the rest of the prosecution witnesses on 12.01.2011. The order sheet further shows that P.W. 5 and P.W. 6 has been examined and vide order dated 19.05.2011, non bailable warrants were directed to be issued against the rest of the witnesses and again non bailable warrants were issued on 28.06.2011 and further vide order dated 16.11.2011. It further appears that non bailable warrants were also issued on 20.12.2011 and later on reminder was issued vide order dated 04.01.2012 to the Superintendent of Police but no witness has appeared and vide order dated 23.03.2012, the argument of the parties were heard and case was put up for judgment on 24.03.2012. On 24.03.2012, judgment was passed, opposite party no. 2 was acquitted from the charges levelled against him. However, from perusal of entire order sheet, it does not appear that there was any service report of summons, bailable warrants or non bailable warrants



rather it appears that in spite of no service report of summons,ailable warrants or nonailable warrants have been issued on the informant and other witnesses and even in absence of any service report, the evidence was closed and after argument, the opposite party no. 2 was acquitted.

6. On the other hand, it has been submitted on behalf of opposite party no. 2 that in spite of several opportunities given to the informant and other witnesses, they did not choose to appear and several adjournments have also been given. Summons were issued,ailable warrant and nonailable warrant were also issued to the witnesses and D.O. letter has also been written to the Superintendent of Police but the informant and other witnesses did not appear. Thereafter, the case was closed and judgment was delivered. It has also been submitted that on merit also informant or her husband are not the eye witness of the occurrence and P.W. 1 to P.W. 4 have been declared hostile and evidence of P.W. 5 disclosed that the informant is his daughter in law and the victim is cousin grand daughter and informant Mira Devi is the step mother of the girl and she used to assault the victim and due to this act of her, the victim has left the house and has gone to his father at Patna, who is employed in Bihar Military Police. After that she did not return. The girl was aged about 20 to 22 years and no one has abducted her and the case lodged by the



informant was false and concocted and as such, on merit also, there is no legal evidence available on record. Hence, there is no illegality in the impugned judgment and the same does not require any interference.

7. Having heard both sides and on perusal of the record, it appears that summons have been issued against the witnesses and several adjournments were also given. However, there is no service report available on record. Thereafter, bailable and non bailable warrants were also issued and the adjournments have also been given but no service report is available on the record. Chapter VI of Code of Criminal Procedures provides the process for service of summons and Section 70 of the Code of Criminal Procedure provides for issuance of warrant. However, it appears that learned Trial Court, without waiting for service report of the summons, to be more precise, it appears that he has not tried to obtain the service report of summons and issued bailable warrants and further non bailable warrants and further without waiting for execution of report, warrant of arrest bailable and non bailable, closed the evidence. As such, it appears that the learned Trial Court has proceeded in most mechanical manner in closing the evidence and passing the judgment. The Trial Court has also failed to consider that there is allegation of kidnapping the daughter of informant and the girl is still traceless. In such a situation, the



informant and her husband appears to be most competent witnesses and without examining them and without exhausting the process, the evidence was closed, which appears to be against the provisions contained in the Code of Criminal Procedure. Moreover, the ends of justice also requires the examination the informant and her husband by the Trial Court and the evidence ought to have been closed only after service report/ execution report of the process as provided in Chapter VI of the Code of Criminal Procedure.

8. In view of the discussions made above, this Court finds that the impugned Judgment suffers from inherent illegality and impropriety.

9. Accordingly, the instant revision application is allowed. Judgment dated 24.03.2012 passed in Sessions Trial No. 883 of 2010/Trial No. 043 of 2010 arising out of Raniganj P.S. Case No. 187 of 2009, by Shri Jitendra Nath Singh, Additional Sessions Judge, Fast Track Court, Court No. IV, Araria, is set aside. The matter is remitted back to the Trial Court to pass the judgment afresh within a period of six months after recording the evidence of rest of the witness or at least the evidence of informant and her husband.

10. Needless to say, as the informant has filed this revision application, now she has the knowledge about the judgment passed by this Court, as such, it is expected from her that she will cooperate the



Trial Court in her examination as well as the examination of her husband, so that the trial may be concluded within a period of six months.

**(Vinod Kumar Sinha, J)**

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