

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.583 of 2018

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1. Rabindra Yadav son of Yugal Yadav, resident of Ward No. 13, Kachhua Hari Nagar, P.S.- Kusheshwar Asthan, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Rakesh Kumar Samrendra, Adv.
Mr. Manager Sah, Adv.

For opposite party no. 2 : Mr Sushil Kumar Singh, Adv.

For the Respondent/s : Mr. Shailendra Kumar – 2, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

C.A.V. JUDGMENT

Date: 30 -10-2018

This application has been preferred for setting aside the order dated 21.03.2018 passed by the learned Additional Sessions Judge – VII, Patna in Sessions Trial No. 695 of 2012, whereby and whereunder, the petition dated 17.01.2018 filed by the petitioner under Section 311 of the Cr.P.C. for issuing summon to Investigating Officer, Boondi Manjhim Inspector C.I.D. Patna, who had also made some investigation of the Kotwali P.S. Case No. 26/11 and also for brining out certain documents on record under Section 91 of the Cr.P.C., has been rejected.

2. Prosecution case as per the fardebyan of the informant Yogendra Rai in short is that in the night of 22.01.2011 around 12 AM to 1 AM, while the informant, his wife and sleeping in the house,



somebody knocked the main door and when the informant opened the door, he named two accused persons, namely, Vijay Kumar Mishra and Fuleshwar Yadav, who forcibly entered into the house followed by seven other named accused persons and three four unknown persons started asking about the documents related to land and when the informant denied, they tied his hands, legs and wrapped his mouth by towel and fastened him with the supply pipeline in the bathroom and also assaulted him badly. Thereafter, accused Vijay Kumar Mishra started enquiring about the papers of the land from the wife of the informant to which she protested and refused to hand over the papers of the land. When asked from the eldest son of the informant, namely, Amit Kumar, he showed them a box containing the papers, they broke open the lock of the box and took away the papers of land along with receipt of four lacs rupees, which was paid to the named accused Vijay Kumar Mishra as advance for the purchase of one piece of land, cash worth Rs. 1,80,000/- (One Lac Eighty Thousand) and also jewellery worth Rs. 70,000 (Rs. Seventy Thousand). Informant after his release saw his wife dead having sharp cut injury around her neck.

3. It appears that while the case was under investigation by the local police, the wife of the accused Fuleshwar Yadav, namely, Rama Devi filed an application before the C.I.D, stating therein that the local police is not investigating the case in right perspective and



requested for investigation of the case by C.I.D. Pursuant to the said application of Rama Devi and others, the case was handed over to Sri Boondi Manjhi, Inspector of Police, C.I.D. by Superintendent of Police, C.I.D. In the meanwhile, the local police submitted charge-sheet in the case on 30.06.2012 against all accused persons named in the F.I.R. under Section 302, 380/34 of the Indian Penal Code.

4. Further case of the revisionist – petitioner is that the C.I.D after proper investigation submitted report on 19.07.2012 and the said report explicitly questioned the genesis of the complaint with logical reasoning and the Boondi Manjhi, Investigation Officer, C.I.D. found the investigation of the police, ill conceived and pointed the deficiency and errors in the investigation carried out by the local police.

5. On that, the Superintendent of Police (CID) vide letter no. 1374/C, dated 10.06.2013 had drawn the attention of Senior Superintendent of Police, Patna towards the wrong inception of the investigation as well as the deficiency and errors of the investigation and recommended the Senior Superintendent of Police, Patna to start further investigation under Section 173(8) Cr.P.C. by giving information to the concerned court. However, no step was taken in this regard and the case proceeded on the basis of charge-sheet submitted by the local police and the case was committed to the court of sessions.



6. In the meantime, one of the co-accused Vijay Kumar Mishra filed a petition on 20.10.2013 before the Court of Additional Sessions Judge – VII, Patna in Sessions Trial No. 695/123, stating therein that the case was investigated by the C.I.D, who has submitted its report to the Senior Superintendent of Police, Patna with a request for further investigation of the case and prayed for staying the proceeding but the aforesaid petition was rejected by the learned Court vide order dated 22.10.2013.

7. Further case is that the aforesaid order dated 22.10.2013 could not be challenged as the said order did not bear the signature of the learned Judge and due to which, the certified copy of the order dated 22.10.2013 could not be issued.

8. Further case is that the petitioner after obtaining the copy of the above stated report of C.I.D., Patna, Bihar through Right to Information Act and soon, thereafter, handed over the same to his counsel to file suitable petition before the court below and, hence, the petitions dated 17.01.2018 and 25.01.2018 were filed on behalf of the petitioner before the learned Additional Sessions Judge – VII, Patna, under Section 311 of the Cr.P.C. to issue summon to the Investigating Officer, Boondi Manjhi for his cross-examination as well as incorporation of the said report of C.I.D. as part of the prosecution document under Section 91 of Cr.P.C. However, learned Additional Sessions Judge – VII, Patna dismissed the aforesaid petitions vide



order dated 21.03.2018 and corrected on 24.04.2018 in a mechanical manner on the grounds of being inordinate delay on the part of the petitioner, as the case has already reached the stage of argument and the argument on behalf of one set of accused Vijay Kumar Mishra is completed.

9. Being aggrieved aforesaid order dated 21.03.2018, the present revision application has been preferred.

10. Contention of learned counsel for the petitioner is that the learned Trial Court has rejected the petitions filed by the revisionist – petitioner on mechanical manner without proper application of mind and also failed to consider that petitions under Section 311 and 91 of the Cr.P.C. can be filed at any stage and the materials, which, the revisionist – petitioner wants to brought on record is essential for ends of justice as a parallel investigation has been conducted by the C.I.D and the report has also been submitted and as such, non – examination of the Boondi Manjhi, Investigating Officer, Inspector of C.I.D. as well as the report of C.I.D is essential documents for just decision of the case.

11. The informant opposite party no. 2, has been made party in this case and a counter affidavit has also been filed on his behalf and learned counsel for the informant / opposite party no. 2 has opposed the prayer of the petitioner – revisionist on the ground that there is no order of the State Government or any competent authority for



investigation of the case by C.I.D. and there is no concept or provision of parallel investigation in the Cr.P.C, as such, the aforesaid Boondi Manjhi, Inspector of C.I.D cannot be termed as Investigating Officer of this case. Further submission is that the report, which, the petitioner wanted to bring on record is not an investigation report as per the provisions of Cr.P.C. and the report is without any order of the competent authority as such same cannot be termed as a report under Section 173 of the Cr.P.C. Moreover, that very report is not the part of the investigation report and the chargesheet has been submitted and police paper has been supplied and Boondi Manjhi is not assigned as charge-sheet witness in this case. Further submission of learned counsel for opposite party no. 2 is that earlier also a petitioner was filed by one of the co-accused Vijay Kumar Mishra for staying the proceeding before the Trial Court and the same was rejected vide order dated 22.10.2013 but no revision was preferred against that order and now when the evidence is closed and argument of one set of co-accused is completed and the case was fixed for the argument of the accused – petitioner, the present application has been filed in order to delay the trial. On the basis of the above submissions, learned counsel for opposite party no. 2 submitted that the revision application filed by the petitioner has no merit and has been filed as a ploy to delay the trial.

12. Having heard both sides, on perusal of materials on record, it



appears that in this case, charge-sheet has been submitted by the police and, thereafter, the cognizance of the offence was taken and the case was committed to the court of sessions and during trial, a petition has been filed by one of the co-accused Vijay Kumar Mishra with a prayer to stay the proceeding on the ground that parallel investigation has been done by C.I.D. However, the learned Trial Court has refused to stay the proceeding vide order dated 22.10.2013 and the aforesaid order has also not been challenged by any of the parties. Thereafter, another petition has been filed by the revisionist – petitioner for summoning Boondi Manjhi, Inspector of C.I.D. under Section 311 of the Cr.P.C. and also for bringing on record the report submitted by the C.I.D under Section 91 of the Cr.P.C. Case of revisionist – petitioner is that wife of one of the co-accused has filed an application before the C.I.D. on which, the matter was referred to the C.I.D. Patna and Shri Boondi Manjhi, Inspector of C.I.D. was appointed as Investigating Officer in Kotwali P.S. Case No. 26/11 and a report was submitted by the said Boondi Manjhi doubting the allegation against the accused persons and Superintendent of Police (C.I.D.), Patna also wrote a letter requesting and recommending the Senior Superintendent of Police, Patna to start further investigation under Section 173(8) Cr.P.C. However, no action was taken on the said application then, a petition was filed before the court below for examination of Boondi Manjhi and for bringing on record the



investigation report, which has been rejected by the learned Trial Court.

13. Section 154 of the Cr.P.C. deals with regard to information to the police for a cognizable offence, in which it has been mentioned that:

Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

[\(2\)](#) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

[\(3\)](#) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

14. Similarly, Section 156 of the Cr.P.C. defines Police officer' s power to investigate cognizable case, which reads as follows:-

156. Police officer' s power to investigate cognizable case.

[\(1\)](#) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the



provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.

15. The aforesaid two sections of the Cr.P.C. shows that it is the power of Officer In-charge of the Police Station to investigate the cognizable offence. It is the Officer In-charge of the Police Station, who receives the information with regard to a cognizable offence and any Officer In – charge of the Police Station may also without the order of the Magistrate investigate the cognizable offence. The Section 2(o) of Chapter I of the Code Of Criminal Procedure, 1973 defines the word “officer in charge” and provides that *"officer in charge of a police station" includes, when the officer in charge of the police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present'* and definition 2(r) of Chapter I of the Code Of Criminal Procedure, 1973 defines that a *"police report" means a report forwarded by a police officer to Magistrate under sub-section (2) of section 173;*

16. Similarly definition 2(h) of Chapter I of the Code Of Criminal



Procedure, 1973 shows that *"investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf*

17. On bare perusal of the aforesaid provisions, it appears that the Officer In-charge of a Police Station or any officer of the police station assigned by him may conduct an investigation of a cognizable offence and submit a police report as defined under Sub-Section (2) of Section 173 of the Cr.P.C. In the present case, the plea of the revisionist – petitioner is that the investigation was handed over to the C.I.D. but there is no order available on record to show that the investigation was handed over to the C.I.D. by the State Government or by High Court rather it appears that C.I.D. has made an enquiry on its own and submitted a report, which cannot be termed as report under Section 173(2) of the Cr.P.C. Moreover, there is nothing available on record to show that investigation of this case has been handed over to the C.I.D. by the State Government or by any competent authority. Section of 43 of the Bihar Police Manual provides that *the crime investigation department of the state shall initiate investigation of inter state, inter district and other offences of serious nature as notified by the government from time to time or specially handed over to it by the director general of police in accordance with the prescribed process and norms.* However, as



stated above, there is nothing on record to show that the investigation was ever handed over to the C.I.D. The aforesaid fact finds supports from the plea of petitioner itself, as it is the case of the petitioner that after enquiry Boondi Manjhi, Inspector of C.I.D. has submitted the report and the Superintendent of Police (C.I.D.), Patna has wrote a letter to the Senior Superintendent of Police, Patna requesting and recommending for further investigation under Section 173(8) of the Cr.P.C. but no action was taken and the charge-sheet was submitted by the police, who is authorized under the provisions of Cr.P.C. and event the petition filed by one of the co-accused, namely, Vijay Kumar Mishra for staying the proceedings has been rejected by the learned Additional Sessions Judge. As such, neither the report, which the petitioner wants to bring on record is an investigation report nor the Boondi Manjhi has done any parallel investigation in this case and he has not even been authorized by the State Government to conduct the investigation nor the case was transferred to the C.I.D. for investigation. The report is not the part of the police papers to be supplied to the accused as per the provisions contained in Section 207 and 208 of the Cr.P.C. nor Boondi Manjhi is a charge-sheeted witness.

18. No doubt, it is well established that petition for summoning a witness under Section 311 of the Cr.P.C. and summon to produce document under Section 91 of the Cr.P.C can be filed at any stage for the ends of justice. However, in the present case, earlier petition filed



by the co-accused Vijay Kumar Mishra has already been rejected by the learned Trial Court vide order dated 22.10.2013 and the same has not been challenged. Moreover, the defence while examining the witnesses had a chance to pray before the court for summoning the Boondi Manjhi or brining on record certain documents but it appears that now the argument of one set of co-accused person has already been closed and the present application has been filed. However, as I have discussed above, the investigation was not handed over to the C.I.D. by the order of the State Government or by any competent authority and as such, the investigation made by Shri Boondi Manjhi, Inspector of C.I.D. and the report submitted by him as per definition 2(h) to 2(r) of Chapter I of the Cr.P.C. and the same has no relevance in the present case nor Boondi Manjhi is an Officer In-charge as as per definition 2(o) of Chapter I of the Cr.P.C. In such view of the matter, the petition filed by the revisionist petitioner appears to be nothing but a ploy to delay the conclusion of trial and not essential for the ends of justice.

19. Accordingly, I find no merit in the instant revision application and the same is, hereby, dismissed.

20. However, as the case is for argument, learned Trial Court is directed to proceed with the argument and conclude the trial as expeditiously as possible preferably within a period of six months.



(Vinod Kumar Sinha, J)

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AFR/NAFR	NAFR
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