

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10416 of 2017

Arising Out of PS.Case No. -79 Year- 2012 Thana -KATEYA District- GOPALGANJ

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Sriram Singh, Son of Late Prahlad Singh, resident of village - Chhitouna, P.S.
Kateya, District - Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. Badsah Singh, Son of Late Sudama Singh, resident of village - Chhitouna, P.S.
Kateya, District - Gopalganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Suresh Prasad Bhakta, Advocate.
For the Opposite Party/s : Mr. Anant Kumar, A.P.P

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-07-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioner for quashing the order dated 03.02.2017 passed by the learned 3rd Additional Sessions Judge, Gopalganj in Sessions Trial No. 402 of 2012 arising out of Kateya P.S. Case No. 79 of 2012 whereby and whereunder he dismissed the application preferred under Section 311 of the Cr.P.C by the Public Prosecutor for summoning the investigating officer and the doctor in trial.

2. Mr. Bakshi S.R.P Sinha, learned Senior Advocate appearing on behalf of petitioner submitted that the trial against the accused person is going on interalia for the offence punishable under



Section 302 of the Indian Penal Code. In course of trial, all the independent witnesses have been examined and they have supported the prosecution case. However, the doctor and the investigating officer could not be examined and even without their examination the court has closed the prosecution case. Under such circumstances, the Public Prosecutor filed an application on 16.12.2016 in the court below for summoning the investigating officer and the doctor, who had conducted post-mortem examination. However, the petition filed by the prosecution has erroneously been dismissed by the court below. He submitted that if the doctor and the investigating officer are not examined, the same would cause great prejudice to the case of the prosecution. On query, learned Senior Advocate appearing for the petitioner submitted that to the best of his knowledge trial has not yet concluded and the judgment has not been pronounced. On further query as to whether the State, which is prosecuting the matter in the court below, has challenged the order impugned before this Court, he replied that to the best of his knowledge the State has not carried the matter to this Court after the order impugned was passed by the court below on 03.02.2017.

3. I have heard learned Senior Advocate appearing on behalf of the petitioner and perused the record.

4. From perusal of the impugned order, it would appear that



altogether three witnesses were examined during trial. The first witness was examined on 16.04.2013 and the last witness was examined on 13.02.2014. Since then several opportunities were given to the prosecution to produce the investigating officer and the doctor for recording their deposition. The trial court directed the Superintendent of Police and the D.I.G of the Zone to produce those two witnesses, but still the investigating officer and the doctor did not turn up and after keeping the matter pending for about three years after examination of the last witness, the court closed the prosecution case and only thereafter an application was filed under Section 311 of Cr.P.C. by the learned Additional Public Prosecutor for summoning the doctor and the investigating officer of the case.

5. Apparently the prosecution was not diligent in pursuing the trial. In the instant case, F.I.R was instituted on 30th March 2012 and since then the accused persons are facing rigors of trial. Their trial cannot be prolonged for indefinite period. The right to a speedy trial is a fundamental right enshrined in Article 21 of the Constitution of India. The fundamental rights are meant to be enforced effectively. Keeping the conduct of the prosecution in mind, the court below has rejected its application filed under Section 311 of the Cr.P.C. Hence, no fault can be found with the impugned order.

5. That apart, I am of the opinion that the petitioner has no



locus in the matter. A trial in a criminal case has to be conducted by the Public Prosecutor or the Assistant Public Prosecutor in-charge of the case under Section 301 of the Cr.P.C. A private person may instruct the Public Prosecutor or the Assistant Public Prosecutor in-charge of the case and may with permission of the Court submit written arguments after the evidence is closed in the case under sub-section (2) of Section 301 of the Cr.P.C. However, a private person even if it is the informant has no locus to pursue an application under Section 311 of the Cr.P.C in the court below or to challenge the order which may have been passed on an application filed by the prosecution under Section 311 of the Cr.P.C.

6. In view of the discussions made above, the application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/Sneha

AFR/NAFR	NAFR
CAV DATE	N.A.
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