

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.225 of 2018

Arising Out of PS. Case No.-22 Year-2011 Thana- C.B.I CASE District- Patna

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The Central Bureau Of Investigation Through Superintendent Of Police,
C.B.I., A.C.B., Patna

... .. Petitioner/s

Versus

Sitaram Rajak, Son of Munder Rajak, Resident of Village- Bhartiya Nagar,
Ward No. 26, Bajrang Bali Road, P.S. Saharsa, District- Saharsa.

... .. Respondent/s

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with

Criminal Miscellaneous No. 46934 of 2017

Arising Out of PS. Case No.-22 Year-2011 Thana- C.B.I CASE District- Patna

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The Central Bureau Of Investigation Through Deputy Superintendent Of
Police, C. B. I, A. C. B., Patna

... .. Petitioner/s

Versus

Sitaram Rajak Son of Munder Rajak Resident of Village- Bhartiya Nagar,
Ward No. 26, Bajrang Bali Road, P.S. Saharsa, District- Saharsa.

... .. Opposite Party/s

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with

Criminal Revision No. 1086 of 2016

Arising Out of PS. Case No.-22 Year-2011 Thana- C.B.I CASE District- Patna

=====

The Central Bureau Of Investigation through Superintendent Of Police,
C.B.I , A.C.B., Patna.

... .. Petitioner/s

Versus

Sitaram Rajak Son of Munder Rajak, Resident of Village- Bhartiya Nagar,
Ward No. 26, Bajrang Bali Road, P.S. Saharsa, District- Saharsa.

... .. Respondent/s

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Appearance :

(In Criminal Revision No. 225 of 2018)

For the Petitioner : Mr. Sanjay Kumar

For the Respondent : Mr. Gajendra Pratap Singh

(In Criminal Miscellaneous No. 46934 of 2017)

For the Petitioner : Mr. Sanjay Kumar

For the Opposite Party : Mr. Gajendra Pratap Singh

(In Criminal Revision No. 1086 of 2016)

For the Petitioner : Mr. Sanjay Kumar



For the Respondent : Mr. Gajendra Pratap Singh

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

9 12-07-2018 The petitioner/CBI has challenged the order dated 12.01.2018 passed by the learned Special Judge, CBI-Ist, Patna in special case No. 117 of 2011 arising out of R.C. No. 22A of 2011, whereby the petition filed on behalf of the CBI under Section 311 of the Code of Criminal Procedure for summoning four other prosecution witnesses has been rejected.

It may be noted that earlier also, such a request was made by the CBI, but the same was rejected by the Court primarily on the ground that there was a direction by a Writ Court to conclude the case positively by the end of year 2015. Against the aforesaid order of the CBI court, refusing the prayer of the petitioner for summoning the aforesaid witnesses, the CBI again approached this Court under revisional jurisdiction. The aforesaid revision petition was not entertained by this Court, holding that an order passed under Section 311 of the Code of Criminal Procedure, is an interlocutory order and therefore, the bar of Section 397(2) Cr. P.C. was attracted.

The petitioner/CBI again approached this Court under Section 482 of the Code of Criminal Procedure with the same challenge to the order referred to above. This Court vide order dated 07.12.2017 set aside the order of the court on the ground that the CBI court had not adverted to



the fact situations, which were important to be considered for passing an order under Section 311 of the Code of Criminal Procedure; rather the Court only harped upon the deadline fixed by the Writ Court. The court below was therefore, directed to apply its mind afresh over the issue that is whether the four witnesses be summoned for being examined at the trial and thereafter, pass a reasoned order in accordance with law.

The CBI court thereafter heard the matter again and found that sufficient opportunity had been given to the CBI to bring the aforesaid witnesses and no further indulgence could be granted to it.

On the day when the aforesaid order was passed, the CBI was not ready with the witnesses, whom it wanted to be examined.

The learned advocate appearing for the opposite party has very strenuously argued that the opposite party has been facing the trial for such long time even after his retirement and it would not be proper for the CBI to ask for any further adjournment. He further submits that he is being made to suffer unnecessary hardships and the reasons for the same, are absolutely inexplicable to him. He has further submitted that any order passed under Section 311 of the Code of Criminal Procedure is an interlocutory order and therefore, no revision could be maintained. Additionally, it has been argued that once a deadline has been fixed by a Writ Court, this Court sitting in revisional jurisdiction cannot



pass any order which would liquidate or terminate the mandate of the Writ Court.

The aforesaid grounds urged on behalf of the opposite party is being noted to be rejected.

No doubt, a person has a right to speedy trial which cannot be scuttled by the prosecuting agency, but, nonetheless a fair trial would mean that all the necessary witnesses are examined and the court has all the materials before it to unravel the truth. A judgment, if delivered on inchoate facts, will only lead to a lop-sided trial which would bring benefit to none.

Without going into the aforesaid details and technicalities whether a revision is maintainable against an order refusing to summon witnesses under Section 311 of the Code of Criminal Procedure, this Court is of the view that a final opportunity be surely given to the petitioner/CBI to bring the four witnesses before the trial court.

The witnesses whom the CBI wants to examine before the trial Court are (I) Yogendra Sah who is the complainant, (ii) Binod Kumar, who is an eye witness to the trap proceedings, (iii) Amitesh Kumar, who is a voice expert and (iv) K.M. Choudhary, who is a voice sample witness.

The aforesaid witnesses ought to be brought before the trial court and be examined positively within a period of three months from the date of passing of the order/production of a copy of this order before the trial court. After the period of three months, the CBI shall be



precluded from making any prayer for further extension. This Court say so by taking into account that sufficient time has elapsed since the trial commenced and the accused/opposite party is not to be blamed for the witnesses not coming before the court for being examined.

What has weighed with this Court in passing this order and giving further time to the CBI is that the power under Section 311 of the Code of Criminal Procedure is to be exercised for a just decision in the case. The aforesaid power, though discretionary in the nature, ensures that judgment is not passed on any inchoate, inconclusive or speculative presentation of facts for in such an event, the ends of justice would be deflected/defeated. The evidence of the complainant, eye witness to the trap and voice sample witnesses are, in the opinion of this Court, important witnesses, who ought to be examined in order to find out the truth in the allegation or the charge. Only for the reason of delay, their evidence cannot be shut out for consideration before a court which is dealing with the matter. The timely conclusion of trial, no doubt, is absolutely important and no court shall brook of any deliberate attempt to delay the trial, but in the present case, it appears that granting three months' time to the CBI to bring the aforesaid witnesses is reasonable and cannot be said to be an order permitting the filling of the lacunae in the prosecution case.

The trial court is also directed to take all possible coercive steps including issuance of non-bailable warrant of



arrest against the witnesses for attendance of the aforesaid witnesses and if the witnesses do not turn up, the trial court would be at liberty to conclude the proceedings and deliver the judgment as early as possible. The trial court shall take up the case on day-to-day basis so as to maintain the time limit.

It is again made clear that the petitioner/CBI shall not ask for any further adjournment or come up with any plea for extension of time for bringing the aforesaid witnesses.

With the aforesaid direction/observation, the present petition is disposed of.

(Ashutosh Kumar, J)

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