

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8513 of 2018

Arising Out of PS.Case No. -113 Year- 2007 Thana -GAYA COMPLAINT CASE District- GAYA

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Ramji Prasad, son of Late Bhola Nath Saw, resident of Mohalla- Maulaganj, Nai Sadak, P.S.- Civil Lines , District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Chitranjan Prasad Verma, son of Late Gopal Sharan Verma, resident of Mohalla- Sahmir Takiya, P.S.- Civil Lines , District- Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ramashish, Advocate

For the Opposite Party/s : Mr. Ajay Kumar Jha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-08-2018

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 18.08.2017 passed by the learned Additional Sessions Judge-II, Gaya in Cr. Revision No. 2 of 2017/84 of 2017 (S.J.) whereby she has dismissed the Revision Application against the order dated 21.04.2017 passed by the learned Additional Chief Judicial Magistrate – II, Gaya in T.R. No. 922 of 2017.

2. The petitioner is being prosecuted in Complaint Case No. 113 of 2007 corresponding to T.R. No. 922 of 2017. In the said



Complaint Case, cognizance has been taken under Sections 406 and 420 of the Indian Penal Code (for short 'I.P.C.') and charges have also been framed under those provisions of the I.P.C. After framing of charge, witnesses on behalf of the complainant were examined and the statement of the accused petitioner was recorded under Section 313 of the Cr.P.C. on 22.11.2011. Since then, the case was adjourned from one date to another till 20.06.2015 for adducing evidence by the defence. On 20.06.2015, the learned Magistrate specifically directed the petitioner to produce the defence witnesses within next two days. In spite of that, no witness was produced on behalf of defence. Thereafter, in his order dated 03.02.2016 the learned Magistrate has clearly recorded that despite several adjournments since 20.06.2015, the defence has failed to produce any witness, hence, the defence case is closed and the case was fixed for final arguments. Thereafter, the petitioner filed an application for recall of the order dated 03.02.2016 in the court of Additional Chief Judicial Magistrate, which was rejected vide order dated 21.04.2017. The said order passed by the learned Magistrate on 21.04.2017 was challenged by way of filing a revision application before the Sessions Court. The revisional court vide impugned order dated 18.08.2017 dismissed the revision application holding therein that there is no illegality or impropriety in the order impugned.



3. Assailing the impugned order dated 18.08.2017, learned counsel for the petitioner submitted that the order passed by the revisional court as also by the learned Magistrate is bad in law. He contended that in the interest of justice it is required that there should be a fair trial. A fair trial would not be possible if the defence is not provided with an opportunity to examine witnesses on its behalf.

4. On the other hand, learned counsel for the State submitted that several opportunities were granted to the petitioner by the learned Magistrate and when the case was closed and fixed for argument, an innocuous kind of petition was filed by the petitioner before the Magistrate for recall of the order by which the evidence on behalf of the defence was closed, which has rightly been rejected by the learned Magistrate as also by the revisional court.

5. I have heard learned counsel for the parties. I find substance in the submissions made by the learned counsel for the State. Section 362 of the Cr.P.C. bars a criminal court from recalling any order after it is signed except to make clerical or arithmetical correction.

6. Though the instant application has been filed under Section 482 of Cr.P.C., the same is in the nature of second revision, which is barred under Section 397(3) of Cr.P.C. That apart, even on merits, the order impugned does not suffer from any illegality or



impropriety.

7. The application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-Sanjeev

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	31.08.2018
Transmission Date	31.08.2018

