

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11018 of 2018

Arising Out of PS.Case No. -47 Year- 1996 Thana -VIJAYPUR District- GOPALGANJ

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Mahatma Pandey, S/o Late Indrashan Pandey, Resident of Village- Sudamachak
(Durga Mandir), P.S.- Vijayipur, District- Gopalganj.

.... Petitioner

Versus

1. The State of Bihar.
2. Ramadhar Pandey, S/o Jata Shankar Pandey,
3. Rakesh Pandey, S/o Ramadhar Pandey,
4. Budhdeo Gond, S/o Bhigurashan Gond,
5. Shiv Nath Gond, S/o Shyambahal Gond,
All resident of Village- Sudama Chak, P.S.- Vijayipur, Dist- Gopalganj.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Uday Pratap Singh, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-08-2018

Defects pointed out by the Registry are ignored.

2. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 15.11.2017 passed by the Fast Track Court-II, Gopalganj in Session Trial No.65 of 1998 arising out of Vijayipur P.S. Case No.47 of 1996 whereby and whereunder he has rejected the application filed under Section 311 of the Code of Criminal



Procedure (for short 'CrPC').

3. Learned counsel for the petitioner submitted that the order impugned has been passed in an illegal manner. According to him, investigating officer of the case is a material witness and his examination was essential for the just decision in the case. He pleaded that though notices were issued to the investigation officer for getting evidence, but for one reason or the other, he could not be examined. He argued that the non-examination of the investigating officer will prejudice the case of the prosecution.

4. On the other hand, learned counsel for the State submitted that there is no illegality in the order impugned. The case is quite old and despite lapse of about 22 years from the date of institution of the case, the investigating officer did not appear for his evidence and thus, the Court has rightly rejected the prayer made by the petitioner for summoning the investigating officer of the case.

5. I have heard learned counsel for the parties and carefully perused the record.

6. The petitioner is informant of Vijayipur P.S. Case No.47 of 1996 registered for the offences punishable under Sections 323, 324 and 435 of the Indian Penal Code. On completion of investigation, charge-sheet was submitted in the court under



Sections 323 and 436 of the Indian Penal Code vide Charge-sheet No.43 of 1996 dated 31.08.1996 and cognizance was also taken of the said offences. Since the offence punishable under Section 436 of the Indian Penal Code is triable by the Court of Session, the case was committed to the court of session on 04.09.2000 by the court of Magistrate. After framing of charges under Sections 436 and 323 of the Indian Penal Code, the first witness was examined on 22.07.2002 in the Sessions Court and the last witness was examined on 01.04.2013. Though, summonses were issued to the investigating officer of the case, he failed to appear before the court. Under such circumstance, vide order dated 25.04.2013, the prosecution evidence was closed and statements of the accused persons were recorded. Thereafter, evidence on behalf of the defence was closed on 21.06.2013. On 06.10.2017, arguments were also advanced on behalf of the parties. Thereafter, when the case was fixed for judgment, the informant of the case filed an application for summoning the investigating officer of the case, which has been rejected by the court below vide impugned order dated 15.11.2017.

7. The power conferred under Section 311 of the Cr.P.C. in a court is discretionary one. The discretionary power has to be exercised not only from the point of view of the prosecution or the accused but also from the point of view of the society. While



exercising such power, the court has to balance several factors which may be peculiar in each case. One of the factors is right to speedy trial. The accused in the present case is facing trial since more than two decades. The prosecution has not been able to examine the investigating officer and at a belated stage when the arguments were over and the case was fixed for judgment, the application under Section 311 Cr.P.C. was filed by the petitioner. Even at the time of filing the application, the investigating officer was not in attendance. Under such circumstances, if the court below has rejected the application, no fault can be found with the impugned order.

8. Resultantly, the application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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