

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.682 of 2019

Arising Out of PS. Case No.-291 Year-2015 Thana- PIRPAINTI District- Bhagalpur

Raj Kishor Singh, aged about 23 years, Son of Sri Chitranjan Singh Resident of Village- Jhamar, P.O. and P.S.- Pirpainti. Dist-Bhagalpur (Bihar)

... .. Petitioner

Versus

1. The State of Bihar Through The Principal Secretary, Department of Home, Govt. of Bihar, Patna.
2. The District Magistrate, Bhagalpur Bhagalpur
3. The Superintendent of Police, Bhagalpur Bhagalpur
4. The Sub- Divisional Police Officer, Kahalgaon, Bhagalpur Bhagalpur
5. The Station House Officer, Pirpainti, Bhagalpur Bhagalpur

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Manoj Kumar Singh, Adv.

For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 01-05-2019

This application under Article 226 of the Constitution of India has been filed by the petitioner for directing the trial court to conclude the trial of Pirpainti P.S.Case No. 291 of 2015 dated 21.10.2015 corresponding to G.R. No. 3911 of 2015 registered under Sections 341, 323, 504 and 379 read with 34 of the Indian Penal Code (for short 'IPC').

2. Mr. Manoj Kumar Singh, learned counsel appearing for the petitioner submitted that after completion of investigation, charge-sheet was submitted under Sections 341, 323, 504 read with 34 of the Indian Penal Code on 31.12.2015 against the petitioner and four other accused persons. Thereafter, the learned



ACJM-XI, Bhagalpur vide order dated 07.04.2016 took cognizance of the offences under Sections 341, 323 and 504 read with 34 of the IPC and summoned the accused persons to face trial. On receipts of summonses, the petitioner and four other accused persons appeared before the court and substance of accusation was explained to them on 22.02.2017. Thereafter, summonses were issued to the witnesses. Till date, only one witness has been examined out of several charge-sheet witnesses. He contended that in the trial court the case is frequently being adjourned from one date to another mechanically in absence of the prosecution witnesses.

3. He urged that the petitioner is an educated unemployed youth. He had appeared in the Jharkhand Constable Competitive Examination, 2015 on 25.09.2016. His physical and medical test was conducted on 26.11.2016 in Dumka whereafter he was declared successful for the post of Constable for Sahibganj district. The Superintendent of Police, Sahibganj vide memo no. 813 dated 15.03.2017 directed the petitioner to submit the original certificates and documents on 20.03.2017 before the Sergeant Major, Police Centre, Sahibganj for verification. Vide memo no. 2452 dated 05.09.2017, the petitioner was informed that in course of verification of character, it was found that Pirpanti P.S. Case No. 291 of 2015 has been found true against him under Sections



341, 323 and 504 read with 34 of the IPC and he has not been acquitted by the court. He was directed to submit final order of the court within ten days failing which the order of appointment would be cancelled. He contended that because of pendency of the instant false case the entire career of the petitioner is at stake. He urged that the manner in which the trial of the petitioner is being conducted is totally unfair and is also against the spirit of the procedure prescribed for trial of summons cases.

4. On the other hand, learned counsel appearing for the State submitted that efforts are being made to produce the witnesses in course of trial. He submitted that there is neither any violation of the procedure prescribed for holding trial of summons cases nor the trial of the petitioner is being conducted in unfair manner. He contended that the State would ensure that all the remaining witnesses are examined within three months from today.

5. The report called for from the learned ACJM-IX, Bhagalpur regarding the status of the trial vide order dated 22.04.2019 has been received. He has reported that the substance of accusation was explained to the accused persons on 22.02.2017. Thereafter, summonses and bailable warrants were issued to the witnesses on 06.07.2017 and 22.04.2019 respectively. However, only one witness has been examined by the prosecution so far. It is



further reported that the case is fixed for evidence of prosecution on 11.06.2019.

6. Having considered the submissions made by the parties and perused the record, I find that the petitioner is being prosecuted in a summons case.

7. Under the Code of Criminal Procedure, there are two types of cases. They are summons cases and warrant cases.

8. Under Section 2(x) of the Cr.P.C, warrant- case has been defined as a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

9. Summons case has been defined under Section 2(w) of the Cr.P.C as a case relating to an offence, and not being a warrant case. In respect of summons cases, there is no need to frame charge. The court explains substance of accusation, which is called notice to the accused when the accused appears in pursuance of the summons.

10. Chapter XX of the Cr.P.C containing Sections 251 to 259 deals with trial of summons cases.

11. In view of Section 251 of the Cr.P.C, in a summons case when the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused is required to



be stated to him, and he should be asked whether he pleads guilty or he has any defence to make.

12. In view of Section 252 of the Cr.P.C, if the accused pleads guilty, the Magistrate shall record his plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon.

13. Section 253 of the Cr.P.C provides an exception to the general rule. It provides a simple procedure for disposing of petty cases in absence of the accused. In view of this provision, the accused may transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.

14. Clause (2) of Section 253 of the Cr.P.C authorises the Magistrate to convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorized by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words used by the pleader and may, in his discretion, convict the accused on such plea and sentence him as aforesaid.



15. Section 254 of the Cr.P.C provides for the procedure to be followed if the accused is not convicted under Sections 252 or section 253 of the Cr.P.C. It provides that if the Magistrate does not convict the accused under Sections 252 or 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

16. Section 255 of the Cr.P.C provides that if the Magistrate, upon taking the evidence referred to in section 254 and such further evidence, if any, as he may, of his own motion, cause to be produced, finds the accused not guilty, he shall record an order of acquittal.

17. Section 256 of the Cr.P.C deals with the circumstances of non-appearance or death of the complainant.

18. Section 257 of the Cr.P.C deals with withdrawal of complaint. It provides that if a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.



19. Section 258 of the Cr.P.C deals with the powers to stop proceedings in certain cases. It provides that if any summons case instituted other than a complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal and release the accused, and such release shall have the effect of discharge.

20. Section 259 of the Cr.P.C empowers the Magistrate to convert summons case into a warrant case if the offence is punishable under two circumstances. They are :

(1) If the offence is punishable with imprisonment for more than six months;

(2) If it appears to the Magistrate that it would be in the interests of justice to try such case in accordance with the procedure for the trial of warrant case.

21. Section 274 of the Cr.P.C deals with the record in summons cases and inquiry. It provides that (1) in all summons cases tried before a Magistrate, in all inquiries under Sections 145 to 148 (both inclusive), and in all proceedings under Section 446



otherwise than in the course of a trial, the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of his evidence in the language of the Court:

Provided that if the Magistrate is unable to make such memorandum himself, he shall, after recording the reason of his inability, cause such memorandum to be made in writing or from his dictation in open Court.

(2) Such memorandum shall be signed by the Magistrate and shall form part of the record.

22. Thus, from the provisions of the Cr.P.C discussed above, it would be manifest that if the accused is not convicted under Sections 252 or 253, the Magistrate would be required to hear the accused and all evidences and the prosecution would be given a chance to open its case by putting the facts and circumstances which constitute the case and by bringing the evidences on which he relied upon to prove his case. The Magistrate on the application of the prosecution shall serve summons to any witness to attend and to produce any document or thing. The Magistrate would be required to prepare memorandum of substance of his evidence according to Section 274 of the Cr.P.C. After the prosecution evidence under Section 254 and examination of defence under Section 313 of the Cr.P.C is



concluded, the court would be required to proceed with the defence hearing under Section 254(1) of the Cr.P.C. After the submission of evidence of the defence, any party to the proceeding may be allowed to submit his arguments under Section 314 of the Cr.P.C. After recording of evidence under Section 254 of the Cr.P.C, if the Magistrate finds the accused not guilty, he will acquit the accused under Section 255(1) of the Cr.P.C.

23. Chapter XXI of Cr.P.C containing Sections 260 to 265 deals with the provisions related to summary trials.

24. From a combined reading of Chapter XX and XXI of the Cr.P.C, it would be manifest that in a summons case, the procedure prescribed for summary trial is to be observed. Summary trials are the trials, which are required to be speedily disposed of.

25. Sub-section (2) of Section 262 of the Cr.P.C provides that no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under Chapter XXI, which provides the procedure for summary trial. All these simplified procedure are with the only purpose to avoid lengthy process of inquiry and trials.

26. In the instant case, it would appear that after the institution of the FIR more than three years and, after the substance of accusation was explained, almost two years have elapsed, but



the trial has not concluded. There is no fault on the part of the accused persons. If the witnesses are not turning up, the court shall not allow a summons case to prolong for an indefinite period.

27. Having regard to the facts and circumstances of the case and the undertaking given by the State, this writ petition is disposed of with a direction to the learned ACJM-IX, Bhagalpur to dispose of the trial of the case within three months from the date of receipt/production of a copy of the order. If the witnesses on behalf of the prosecution do not turn up, the prosecution case should be closed and the court should proceed ahead in accordance with law. The learned A.C.J.M shall also be required to send a report regarding the outcome of the trial on expiry of three months from the date of receipt/production of a copy of this order.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	13.05.2019
Transmission Date	13.05.2019

