

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8678 of 2015

Arising Out of PS. Case No.-165 Year-2008 Thana- KISHANGANJ District- Kishanganj

Subhodeep Sinha son of late Arun Kumar Sinha resident of Line Mohalla
Ward No. 18, Kishanganj, Police Station - Kishanganj, District - Kishanganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Chandra Nand Mandal son of late Bangthu Mandal R/o village Pachira P.S.
Raniganj Distt. Araria.
At present District Education Officer, Kishanganj

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr.Dilip Kumar Singh, Advocate
For the Opposite Party/s :	Mr. Shyam Kumar Singh, APP
For Opposite Party No.2:	Mr. Sanjeev Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date : 23-08-2019

Heard learned counsel for the petitioner, learned
counsel for Opposite Party No.2 and learned Additional Public
Prosecutor for the State.

2. Petitioner is one of the accused in Kishanganj
P.S. Case No. 165 of 2008, registered under Sections
409/420/465/467/468/34 of the Indian Penal Code. The
aforesaid police station case corresponds to G.R. No.623 of
2008. Initially charge sheet was submitted against the petitioner
only. Hence, trial of the petitioner started. In the meantime,
charge sheet was submitted against other co-accused which was
registered as supplementary G.R. No.623 of 2008. Charges in



both the separate trials were framed separately. Two prosecution witnesses were examined in the main G.R. Case wherein petitioner was facing trial. They were P.W.1 Dinesh Prasad Keshri and P.W.2 Shambhu Kumar Singh. Likewise, the aforesaid two witnesses were examined in the Supplementary G.R. case as prosecution witnesses. Thereafter, by order dated 22.02.2013 the learned trial Judge (Sub-Divisional Judicial Magistrate, Kishanganj) amalgamated both the trials, i.e., the original record and the supplementary record, and after amalgamation allowed opportunity to the petitioner to cross-examine the prosecution witnesses examined in the supplementary record. The petitioner by filing a petition on 06.04.2013 raised objection that those witnesses were not examined in presence of the petitioner. Hence, their evidence cannot be used against the petitioner. In view of the provisions of Section 138 of the Evidence Act, the same cannot be used even after their cross-examination by the petitioner. The petitioner further expressed inability to cross-examine the witnesses whose examination-in-chief was not recorded in presence of the petitioner. The said prayer was turned down by order dated 21.09.2013.

3. The petitioner challenged the order dated



21.09.2013 before the learned Sessions Judge in Criminal Revision No.527 of 2013 and the criminal revision was dismissed on 22.01.2014 for simple reason that the same persons were examined as witnesses in the separate trial. Hence, no prejudice is going to be caused to the petitioner.

4. Learned counsel for the petitioner submits that once the trial started, the trial itself should not have been amalgamated because there is no provision in the Code of criminal procedure for amalgamation of trial once started; rather there is provision for joint charge of the accused under Section 223 Cr.P.C. Once the trial proceeded after the stage of charge it could not have been amalgamated. For convenience the Court-below might have gone through both the trial side by side.

5. Learned counsel for Opposite Party No.2 submits that the petitioner never challenged the order dated 22.02.2013 where by-trials were amalgamated. Hence, that order got finality. The only grievance of the petitioner is that the evidence of prosecution witnesses which was recorded in absence of the petitioner in the supplementary G.R. Case cannot be read against the petitioner.

6. Once the Court amalgamated the trial, the trial



would start de novo and the witnesses shall be examined in presence of the accused facing the trial after amalgamation. Hence, the orders dated 22.02.2013 and 21.09.2013 passed by the learned trial Court as well as order dated 22.01.2014 passed in Cr. Revision No.527 of 2013 stands hereby quashed with direction to the trial Judge to frame charges afresh against all the accused and examine the prosecution witnesses afresh in presence of the accused.

7. With the aforesaid observation, this application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.08.2019
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