

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.19376 of 2018

Arising Out of PS. Case No.-40 Year-1991 Thana- SIMRI District- Darbhanga

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Kaleshwar Ray @ Kaleshwar Yadav, Son of Late Chandeshwar Yadav,
Resident of Village- Jaganiya, P.O.- Tharma, P.S.- Gaighat, District-
Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Laxmeshwar Tiwari @ Lachu Tiwari, Son of Ram Madan Tiwari, Resident
of Village- Haripur, P.S.- Simri, District- Darbhanga.
3. Baiju Tiwari, Son of Ram Nandan Tiwari, Resident of Village- Haripur, P.S.-
Simri, District- Darbhanga.
4. Navin Tiwari, Son of Baiju Tiwari, Resident of Village- Haripur, P.S.- Simri,
District- Darbhanga.
5. Gorakh Roy, Son of Laxmi Roy, Resident of Village- Jaganiya, P.O.-
Tharma, P.S.- Gaighat, District- Muzaffarpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Chakrapani, Adv. Mr. Jagjit Roshan, Adv. Mr. Prabhat Kumar Munna, Adv.
For the State	:	Mr. Arun Kumar Singh-5, Adv.
For the Opposite Parties	:	Mr. Jai Kishore Sharma, Adv. Mr. Shashank Shekhar, Adv. Mr. Jitendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

10 15-05-2019

Heard Mr. Chakrapani, learned Advocate for the



petitioner and Mr. Jai Kishore Sharma and Mr. Shashank Shekhar, learned Advocates for the opposite parties.

2. The petitioner is the informant of Simri P.S. Case No. 40 of 1991 and he has sought transfer of Sessions Trial No. 252 of 1992 pending before Fast Track Court, Darbhanga to any other Court of competent jurisdiction in the same Judgeship. The reason for seeking such transfer is the fear in the mind of the informant that justice would not be meted out to him.

3. The reason assigned for such suspicion is that with the change of the Fast Track Court, which is now Presiding and before whom the trial is pending, extreme eagerness has been shown by the opposite parties/accused persons in having the matter argued and decided. The other reason for doubting the fairness of the Court is that on one occasion, when an application was made by the petitioner/informant to add Section 34 of the Indian Penal Code in the charge, instead of opposing the same, an attempt was made by the counsel for the opposite parties to have the charge amended. Apart from this, on one occasion,



it has been urged, the opposite parties were heard saying that their job would now be done.

4. This Court, on hearing the matter at the first instance, had issued notice to the opposite parties and had directed the Trial Court not to deliver the judgment in the case till the final disposal of the present petition. From the order-sheets of this Court, it appears that several adjournments have been taken on one pretext or the other. In any view of the matter, from the perusal of the records, some facts come to the fore which cannot be ignored, notwithstanding the basic proposition that justice should not only be done, but should be seen to be done.

5. The concerned sessions trial is one of the oldest sessions trial in the district. The evidence is complete and the case is only pending delivery of judgment.

6. The grounds which have been taken in this petition and as has been urged orally for doubting the fairness of the Court, are all extremely tentative and cannot be accepted to be true without any further prop. It is quite possible for an accused person to show eagerness in having



the matter concluded, whoever is the Trial Court, since any pending trial or criminal case has a necessary deleterious effect on the career/future prospects of accused persons. This is but natural that in a serious case of sessions trial, it would be only in the interest of the accused persons that the case is finally disposed off. No good purpose is served by keeping the Democles' sword hanging over one's head. In that view of the matter, if any effort was made to have the case decided at the earliest, it ought not to be taken amiss by the prosecution. It is not in the mouth of the prosecution now to question the fairness of the Trial Court, when the case has continued for 15 long years and no effort was made by the prosecution to have it concluded earlier.

7. It is in the same string of thought that an application on behalf of the prosecution for addition/varying of the charge was readily accepted and instead of putting any opposition to such a demand/prayer of the prosecution, an effort was made by the opposite parties to have the charge amended, which would definitely have made the case difficult for respective accused persons. The addition of



Section 34 of the Indian Penal Code brings the case within the ambit of common intention of all the accused persons. This attempt on the part of the opposite parties can only be viewed as an attempt to provide least resistance in having the matter concluded at the earliest.

8. The statement made in this petition that some of the accused persons/opposite parties were heard exclaiming that they would now succeed in the case, has not been proved by any supporting evidence. Such exclamations are normally made by competing parties for the other side, whichever it may be, to go on the backfoot.

9. Without any evidence in support of such utterance having been made by anyone of the opposite parties, a statement made in the petition cannot be accepted to be true and acted upon for transferring the sessions trial from one Court to another.

10. There is always a presumption of the fairness in the procedure. This Court has also taken note of the fact that on such a complaint by the prosecution and a prayer for transferring the case from the concerned Court to any other



Court in the Judgeship of Darbhanga, the District Judge not only rejected the request, but also called for a report from the concerned Court.

11. There is no gainsaying that not only in that particular Court, but in the entire Judgeship of Darbhanga, the concerned Sessions Trial No. 252 of 1992 is one of the oldest cases to be decided.

12. On a holistic appreciation of the facts and after assaying the entire circumstance in a dispassionate and objective manner, this Court has come to the definite opinion that only injustice would be caused if the order of stay is allowed to be continued or an order is passed for transferring the sessions trial from the Court where it is pending to any other Court in the Judgeship of Darbhanga.

13. The Trial Court is under an obligation and is expected to deliver a judgment in accordance with law as expeditiously as possible.

14. The fear of the prosecution that justice will not be meted out is absolutely unfounded as the judgment is subject to judicial scrutiny in appeal. If at all, the judgment



is not found to be in tune with law and in consonance with the materials/evidence collected during the trial, whatever dexterity may be employed for the purposes of subterfuge, those can easily be discerned.

15. For the aforesaid reasons, the petition is dismissed.

16. Needless to state that the learned Trial Court is at liberty to deliver the judgment.

(Ashutosh Kumar, J)

Praveen-II/-

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