

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1988 of 2017

Arising Out of PS. Case No.-635 Year-2014 Thana- BEGUSARAI TOWN District-
Begusarai

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Sharat Kumar Son of Sri Surendra Singh @ Munna, R/o Village- Mungeri
Ganj, Ward No. 32, P.S.- Town and District- Begusarai.

... .. Petitioner

Versus

1. The State Of Bihar, Through The Principal Secretary, Home Department,
Government Of Bihar, Patna an
2. The Principal Secretary, Home Department, Government of Bihar,
Patna.
3. The Director General of Police, Bihar, Patna.
4. The Superintendent of Police, Begusarai.
5. The Police Sub Inspector, Lohia Nagar Outpost, Begusarai, District-
Begusarai.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Vaidehi Raman Singh
Mr.Rajan

For the Respondent/s : Mr.Sanjay Kumar Ghoshrave

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 06-11-2020 Heard Mr. Vaidehi Raman Singh, learned counsel

for the petitioner and Mr. Sanjay Kumar Ghoshrave, learned

counsel for the State.

On 14.09.2020, this Court had taken note of the

fact that the petitioner, who is an accused in Begusarai Town

P.S. Case No. 635 of 2014, stood aggrieved by the order

dated 26.07.2016 passed by the learned Sessions Judge,

Begusarai in Criminal Revision No. 179 of 2016, whereby



the order passed by the learned Chief Judicial Magistrate, Begusarai, dismissing the application of the petitioner for a direction to the prosecution for furnishing of the video clip which was recorded by the Investigator during the investigation of the case has been upheld.

The aforesaid prayer of the petitioner was again rejected by the Trial Court in Sessions Trial No. 247/2016 by order dated 16.08.2017.

The only reason for the petitioner to approach this Court now is that in paragraph – 65 of the case diary, it has been disclosed that the statement of some of the witnesses were video recorded in terms of the proviso to Section 161 of the Code of Criminal Procedure.

Mr. Vaidehi Raman Singh, learned counsel for the petitioner argued that in compliance of the provisions contained in Section 207 of the Code of Criminal Procedure, only the statements, which are reduced in writing are handed over to the petitioner. However, when a video clip was made of the statement of the witnesses, that should also have been provided to the petitioner in compliance of



Section 207 of the Code of Criminal Procedure. The aforesaid grievance was raised by the petitioner at all stages and even at the earliest stage before the Chief Judicial Magistrate, Begusarai but wrongly, such prayer was rejected.

Mr. Ghoshrave, learned counsel for the State, however has submitted that the prosecution was clear in its stand and had also given an undertaking before the Courts below that anything which was not provided to the petitioner / accused would never be used against him.

Similar was the observation of the Trial Court, when such a prayer was again made on behalf of the petitioner, namely, for a direction to the prosecution for delivery of video clip recorded during the investigation.

This Court takes notice of the fact that Section 161 of the Code of Criminal Procedure was amended and the purpose for amending the Section and inserting a proviso that the statement of the witnesses during the investigation could be video/ audio recorded, was only for the purposes of avoiding any withholding / hiding of any information by the Investigator.



In view of the categorical statement made by the State in the counter affidavit that no statement of any witness was video recorded or audio recorded, the matter/controversy is set at rest. The counter affidavit indicates that the Investigator has only recorded in paragraph -65 of the case diary that the Supervisory Officer had examined two persons. There is nothing in the case diary, which would indicate that there was any video or audio recording of any such witnesses. If at all there is a statement in the case diary which gives an impression that the statements made by some of the witnesses have been video / audio recorded, that is only an assumption of the Investigator. However, in view of the consistent stand of the prosecution that such document shall never be used against the petitioner, it would serve no purpose for the petitioner to press his demand for delivery / furnishing of such video clip which according to the prosecution is non-existent.

The counsel for the State submits that of and on this prayer is being made only to delay the conclusion of



trial.

Such statement is not acceptable in view of the fact that if at all there had been a video / audio recording of the statement of the witnesses in accordance with the proviso to Section 161 of the Code of Criminal Procedure that ought to be provided to the accused in compliance of Section 207 of the Code of Criminal Procedure. If such video recording is non-existent, no purpose would be served in digging out the same or making an enquiry whether any statement was video/ audio recorded. It is made clear that any statement which has been video / audio recorded of the witnesses and which is not provided to the accused / petitioner shall not be used against him.

Thus, the prayer made on behalf of the petitioner is rejected.

The petition stands disposed of accordingly.

(Ashutosh Kumar, J)

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