

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19740 of 2021

Arising Out of PS. Case No.-334 Year-2004 Thana- CHAPRA TOWN District- Saran

Rajiv Kumar, S/O Late Jitendra Kumar, R/O Mohalla Gandhi Chowk, In
Front of Canara Bank, P.S.- Chapra Town, District- Saran at Chapra

... .. Petitioner/s

Versus

1. The State of Bihar
2. Chandan Jee S/O Late Sarjug Prasad, R/O Mohalla- Gandhi Chowk, South of Canara Bank, P.S- Chapra Town, District- Saran at Chapra.
3. Manish Kumar, S/O Chandan Jee, R/O Mohalla- Gandhi Chowk, South of Canara Bank, P.S- Chapra Town, District- Saran at Chapra.
4. Lokesh Kumar, S/O Chandan Jee, R/O Mohalla- Gandhi Chowk, South of Canara Bank, P.S- Chapra Town, District- Saran at Chapra.
5. Ritesh Kumar, S/O Chandan Jee, R/O Mohalla- Gandhi Chowk, South of Canara Bank, P.S- Chapra Town, District- Saran at Chapra.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Krishna Kumar Yadav, APP
For the Opposite Party/s : Mr. Ataur Rahman, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 27-04-2022 Learned counsel for the petitioner is permitted to

remove defect(s), as pointed out by the office, within a period of

four weeks from today.

2. Heard Mr. Krishna Kumar Yadav, learned counsel

appearing on behalf of the petitioner and the learned APP for the

State.

3. By invoking the inherent jurisdiction of this Court,

the petitioner is seeking quashing of the part of the order dated

22.01.2020 passed by the learned Presiding Officer, Fast Track



Court-II, Saran at Chapra in Cr. Rev. No. 155 of 2017 whereby the learned court while allowing the prayer of the petitioner and setting aside the order dated 17.05.2017, whereby the learned trial court passed an order to close the prosecution evidence, imposed a condition of payment of cost of Rs.5,000/- to the defence and issued Dasti Summon against Investigating Officer through the informant.

4. The short facts which led to the filing of the present application is that on the basis of Fardbeyan recorded on 04.12.2004, a substantive F.I.R. being Chapra P.S. Case No. 334 of 2004 has been instituted. After institution of the F.I.R., the police took up the investigation and submitted charge-sheet against all the accused persons under Sections 341, 323, 379, 325, 504/34 of the Indian Penal Code. The learned court of Judicial Magistrate, 1st Class, having found sufficient materials on record took cognizance under the above mentioned sections against all the accused persons. On 15.09.2007 charges have been framed against all the accused persons, but later on, vide order dated 18.11.2008 charges were amended to Sections 325/34, 341/34, 323/34, 379/34 and 504/34 of the Indian Penal Code.

5. It is submitted on behalf of learned counsel for the



petitioner that after examination of private witnesses, on a petition of prosecution dated 06.07.2009 summons have been issued to the investigating officer and the treating Doctor for their appearance, but no summons had actually been issued by the office of the learned trial court. Thereafter, the matter was remained kept pending for a long period and on 02.06.2016, the learned trial court directed the office to comply the earlier order for issuance of summons to the investigating officer and the doctor, but unfortunately again the order could not be complied with. The aforesaid matter was again taken up on 16.08.2016 and the learned trial court directed to ensure compliance of the earlier order with a warning that if the order would not be complied, the matter would be informed to the learned District Judge, Saran, but this has never been complied and surprisingly on 17.05.2017, the learned trial Court passed an order to close the prosecution evidence in the case, mentioning therein, that sufficient time has been allowed to the prosecution but the official witnesses did not turn up.

6. The learned counsel for the petitioner drawn the attention of this Court towards the relevant extract of the order-sheet of the proceeding arising out of Chapra (Town) P.S. Case No. 334 of 2004, which was subsequently numbered as Trial



No. 363 of 2017 and tried to persuade this Court that, in fact, at no point of time any summons has been issued by the office of the learned trial court and due to negligence and lapses on the part of the office or office clerk of the trial court, the prosecution/informant could not be blamed or suffered. It is further submitted that the learned trial court while passing an order for closure of evidence failed to appreciate that in spite of repeated order of issuance of summons, at no point of time any summon has been issued to the official witnesses by the office clerk of the Court and in stead of taking action against erring officials directed for closure of evidences in an illegal and improper manner causing irreparable injury to the right of the prosecution as well as informant.

7. It is submitted by the learned counsel for the petitioner that during pendency of the aforesaid trial, original informant, namely, Jitendra Kumar, died and the son of the informant, the present petitioner, being the legal representative, on being aggrieved by the order dated 17.05.2017 filed Cr. Revision No. 155 of 2017. In the said criminal revision, all the parties appeared and the learned Fast Track Court No.-II, Saran at Chapra having taken note of the fact that in spite of repeated direction of the learned trial court for issuance of summons, at



no point of time summons could be issued by the office clerk of the court and the trial court instead of adopting coercive measure for compliance of the order for securing attendance of the official witnesses and without applying the judicial mind, closed the evidence of the prosecution, and accordingly, vide order dated 22.01.2020 pleased to set aside the order dated 17.05.2017 passed by the learned trial court and allowed the revision application with a condition of payment of cost of Rs.5,000/- to the defence and also directed the informant for service of Dasti Summon to the investigating officer.

8. The learned APP for the State justified the order passed by the revisional court and submitted that there is no error/infirmity in the impugned order dated 22.01.2020 passed in Cr. Revision No. 155 of 2017, as the record shows that the case is very old apart from the fact that proper opportunity was given to the prosecution, but the witnesses did not appear.

9. This Court before coming to the conclusion would also like to take note of the submissions of the learned counsel for the petitioner based on the orders/judgment of this Court passed in various cases.

10. Learned counsel for the petitioner in order to strengthen his submissions relied upon the judgment of this



Court rendered in the case of **Md. Yasin & Ors. Vs. The State of Bihar**, reported in **AIR 1954 Patna 437**. The relevant part of para 4 of the judgment is quoted herein below:

.....I think it is the bounden duty of a Court to see that its orders are obeyed, and anyone guilty of disobedience of the orders of the Court should be proceeded against according to law. The Courts are not powerless or helpless in this matter and a Court should take action where there is no reasonable explanation for disobedience of its orders or ignoring of its summonses.....

11. Learned counsel for the petitioner next relied upon the another judgment of this Court passed in the case of **Babuchand Prasad Vs. Rambabu Gope & Ors**, reported in **1979 BBCJ 306**. Para 6 and 7 whereof are quoted herein below:

“6. Learned counsel appearing for the petitioner on a reference to section 230 of the Code of Criminal Procedure which is a provision inserted in the new Code contends that the court was duty bound to issue the process on the application of the prosecution for compelling the attendance of the witnesses in question and by rejection of this prayer as made in the petition filed by the additional Public Prosecutor, a serious miscarriage of justice has resulted in the acquittal and discharge of the accused without being tried for the offence that they are said to have committed.

7. It is, no doubt, true that on the date



fixed for hearing the prosecution has to produce all such evidence in support of its case, but the prosecution is also certainly entitled to seek the assistance of the court in securing the attendance of any witness or production of any document or other things. Even when this new Code was not in force, it was observed by a Bench of this Court in *Md. Yasin & Ors. V. The State* (1954 Cri LJ 1437) that where witnesses on being summoned did not turn up it was the bounden duty of a court to see that its orders were obeyed, and any one guilty of disobedience of the orders of the court should be proceeded against according to law. It was further observed that the courts were not powerless or helpless in this matter and a court should take action where there was no reasonable explanation for disobedience of its orders of ignoring of its summonses. The Supreme Court also in the case of *Jamatraj Kewalji Govani v. State of Maharashtra* (1968 AIR SC 178), while dealing with Section 540 of the old Code observed that this provision conferred a wide jurisdiction on a court to be exercised at any stage of the trial to summon witness or examine one person in court or even recall a witness already examined. This was made rather a duty and obligation of the court provided the just decision of the case demanded it. This court was faced with a similar situation in the case of *State v. Mangi Lal Ram* (1974 Cri LJ 221) (Patna) again a case under the old Code. In that case in a warrant trial instituted on a police report some witnesses were not turning up, and it was observed,



by this court that the correct position of law in this regard was that in a warrant case instituted on police report, the primary duty was of the prosecution to produce witnesses, but since the prosecution which was the State or the public prosecutor had no power or machinery to compel attendance of the witnesses. It was fully justified in seeking the help of the court for their production. Help of the court may be asked for by praying to the court to issue summons to the prosecution witnesses. It was further observed that even if after service of summons a witness did not appear, the prosecution might ask the court to issue warrant of arrest, although in the absence of a prayer to this effect, the court was not obliged nor was its duty to issue any warrant of arrest. It was further observed that even if the prosecution did not make a prayer for issue of summons or for issue of warrant of arrest in a given case, the court was not powerless to issue such a process under the general powers of the court. The position on coming into force of the new Code has improved in this regard and a provision has now been made in Section 230 of the Code, specifically providing for on making of an application by the prosecution issuing any process for compelling the attendance of any witness or the production of any document or other thing."

12. The petitioner also relied upon two of the orders/judgments passed on similar issues in the case of **State of Bihar Vs. Polo Mistry & Ors.**, reported in **AIR. 1964 Pat. 351** and further in the case of **Shiv Charan Yadav Vs. State of**



Bihar & Ors, reported in **1989 Cri LJ 1675**.

13. Having heard the learned counsels for the petitioner and the State and also having gone through the judgments/orders rendered by this Court, it is apt and proper to observe that once the Magistrate takes cognizance of the case, it becomes his bounden duty to go to the root of it and do justice in the matter. The Criminal Procedure Code has given very wide powers to the Magistrate only with a view to clear any possible obstacle in the way of the Magistrate to do justice in cases. Taking cognizance of a case means that the Magistrate prima facie is justified that the offence has been committed in such a situation it is for the Magistrate to find out, who the culprit is and in this process he must adopt every method available to him under the law coming for some decision. If the prosecution is slack and neglectful in its duties, it does not follow that the Magistrate also should fall in line with it. If the persons conducting the prosecution feel disinclined to conduct the prosecution, in that case they can very easily get their cases dismissed by mere default. In the opinion of this Court, the learned trial court before closing the evidence should exhaust all his powers before he makes up his mind for the same.

14. From the submissions and the materials available



on record, it appears that there is laches on the part of the office of the learned trial court and instead of taking action against the erring officials, who were/are responsible in non-complying the order of the trial court, the informant cannot be made to suffer and imposition of any condition would be a further punishment of his no fault. The Court cannot sit as a silent spectator to see and allow the accused to get scot free on account of non-production of the prosecution witnesses. It is the primary duty of the prosecution to produce witnesses, but if the prosecution failed to discharge its duty and shown its helplessness, it is fully justified in seeking the help of the court for the production of the witnesses.

15. It is evident from the facts and the materials on record of this case that the revisional court has rightly set aside the order dated 17.05.2017, but imposition of the condition of payment of cost of Rs.5,000/- is unjustified inasmuch as the prosecution/informant cannot be punished for their no lapses. Further the issuance of Dasti Summons to the investigating officer, who is an official witness through the informant is wholly unwarranted and unheard of it.

16. In view of the aforesaid facts and submissions made on behalf of the learned counsel for the petitioner, as also



in the light of the aforementioned settled proposition of law, the impugned order dated 22.01.2020, to the extent whereby condition has been imposed, is hereby set aside and the learned trial court is directed to take all necessary steps to ensure the attendance of the witnesses forthwith and conclude the trial expeditiously.

17. While disposing of this application, this Court also expects from the learned District & Sessions Judge, Saran at Chapra to take appropriate action against the erring officials after making proper enquiry into the matter.

18. The application stands allowed.

(Harish Kumar, J)

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