

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.339 of 2021

Arising Out of PS. Case No.-94 Year-2020 Thana- BHABHUA District- Kaimur (Bhabua)

1. NEERAJ PRASAD GOND @ NEERAJ KUMAR GOND S/o Paras Gond Resident of Mohalla- Ward No.17, Bhabhua, P.O. and P.S.- Bhabua, District- Kaimur at Bhabua.
2. Vijay Kumar Gond @ Vijay Gond Son of not available Resident of Mohalla- Ward No.17, Bhabhua, P.O. and P.S.- Bhabua, District- Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. The State of Bihar through the D. G. P. Bihar, Patna
2. The D.I.G. Shahabad Range at Dehri-On-Sone, District-Rohtas. Bihar
3. The Superintendent of Police, Kaimur at Bhabhua. Bihar
4. The Dy.S.P. Kaimur at Bhabhua. Bihar
5. The S.H.O., Bhabhua Police Bhabhua, District-Kaimur. Bihar
6. Manju Devi Widow of Late Munna Prasad Patwa Resident of Village- Chaman Lal Pokhara, Ward No.17, P.O. and P.S.-Bhabhua, District-Kaimur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. D.K. Sinha, Sr. Adv. Ms. Km. Shashi Bala Verma, Adv.
For the Respondent nos. 1 to 5:		Ms. Divya Verma, A.C. to AAG3
For the respondent nos.6.:		Mr. Satyendra Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 03-03-2022

Heard learned counsel for the parties.

The petitioner has filed the instant application for directing the respondent-authorities to keep and verify the footage of CCTV camera situated at the place of occurrence and wherein the entire occurrence dated 11.2.2020 has been recorded and further for quashing of the order dated 18.5.2020 passed by the learned Chief Judicial Magistrate, Kaimur at



Bhabua whereby process under section 82 Cr.P.C. has been issued.

The prosecution case in brief is that Bhabua P.S. Case no. 94 of 2020 was registered on 11.2.2020 under sections 379, 341, 323, 324, 504, 506 and 34 of the Indian Penal Code on the statement of the respondent no.6. It was stated by the informant that on 11.2.2020 at 12.30 pm when her husband went out to urinate, the accused Niraj Prasad Gond and his brother Santosh Prasad Gond assaulted her husband as a result of which he fell down injured. On the informant going to her husband's rescue, she was also assaulted by the accused persons and her gold chain was snatched. Deena Prasad Gond reached there and started to abuse them.

It is submitted by learned Senior counsel appearing for the petitioner that the story as narrated in the FIR by the respondent no.6 is absolutely false and concocted and has been lodged only with the intention to harass the petitioner. It was on 22.1.2020 that the husband of the informant (respondent no.6) came along with police personnel to the house of the petitioners and asked them to vacate the house. On inquiry it transpires that the husband of the informant had obtained a forged sale deed. Thus the petitioner no.1 filed Title Suit no.177 of 2020 in the



Court of the learned Sub Judge-I, Kaimur, Bhabua against the informant and others for declaring the sale deed to be void. As a result of the sale deed, the husband of the informant started to torture the petitioner. It is further stated that on 11.2.2020, in a drunken condition the husband of the informant came and started to urinate in front of the house of the petitioner. On the wife of the petitioner no.1 objecting to the same, they were assaulted which led to filing of Bhabua P.S. Case no.95 of 2020 by the petitioner no.1. It is submitted that the petitioner no.1 requested the SHO, Bhabua and also filed a petition before the Director General of Police, Bihar praying therein that in connection with Bhabua P.S. case no.94 of 2020 subordinate authorities/Investigating Officer be directed to inspect the CCTV footage which would clearly show that no such occurrence as alleged in the FIR lodged by the informant/respondent no.6 had taken place. However the Investigating Officer of the case did not enquire into the matter nor any action or steps were taken by the respondent authorities. It is submitted that after dismissal of the application for anticipatory of the petitioner, because of the Covid-19 pandemic the petitioner could not file an application for bail in the Patna High Court nor could he surrender in the Court below. The



husband of the respondent no.6/informant died on 21.2.2020.

It is submitted by the learned Senior counsel appearing for the petitioner that the evidence of CCTV footage is a very vital piece of evidence which would clearly bring the truth out in the open and as such the instant application.

Learned Senior counsel further referring to sections 66B and 85B of the Indian Evidence Act, in support of his contention has relied on the judgment in the case of **Tomaso Bruno and Anr. Versus State of U.P.** [2015(2) PLJR 234 (SC)] and more particularly paragraph nos. 25 to 28 thereof.

Learned AC to AAG 3 referring to the counter affidavit filed on behalf of the respondent nos. 3 to 5 submits that the writ application is not maintainable. Having referred to a number of paragraphs of the case diary, it is submitted that after investigation chargesheet has been submitted finding the case to be true against the two petitioners while coaccused Dina Prasad Gond has been found to be innocent. It is submitted that the investigation in the case having concluded, the petitioners have remedy of moving before the learned Magistrate for a direction for further investigation in the matter. Learned counsel for the State relies on the judgment of the Hon'ble Apex Court dated 16.10.2019 passed in the case of **Vinubhai Haribhai**



Malaviya and Ors. Versus State of Gujarat and Anr. and submits that in paragraph 38 thereof, it has been held by the Hon'ble Apex Court that as to whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who is to exercise such discretion on the facts of each case and in accordance with law.

Having heard learned counsel for the parties and from the material on record it transpires that on investigation chargesheet has been submitted in the case. With respect to the importance of the electronic evidence it would be relevant to refer to paragraph nos. 25 to 28 of the judgment in the case of **Tomaso Bruno**(supra) which is quoted hereinbelow for ready reference:

“25. With the advancement of information technology, scientific temper in the individual and at the institutional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant to establish the guilt of the accused or the liability of the defendant. Electronic documents *strictu sensu* are admitted as material evidence. With the amendment to the Indian Evidence Act in 2000, Sections 65A and 65B were introduced into



Chapter V relating to documentary evidence. Section 65A provides that contents of electronic records may be admitted as evidence if the criteria provided in Section 65B is complied with. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65B of the Evidence Act. Sub-section (1) of Section 65B makes admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in sub-section (2) of Section 65B. Secondary evidence of contents of document can also be led under Section 65 of the Evidence Act. PW-13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it.

26. Production of scientific and electronic evidence in court as contemplated under Section 65B of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of **Mohd. Ajmal Mohammad Amir Kasab vs. State of Maharashtra**, (2012) 9 SCC 1, wherein production of transcripts of internet transactions helped the prosecution case a great deal in



proving the guilt of the accused. Similarly, in the case of **State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru**, (2005) 11 SCC 600, the links between the slain terrorists and the master minds of the attack were established only through phone call transcripts obtained from the mobile service providers.

27. The trial court in its judgment held that non-collection of CCTV footage, incomplete site plan, non-inclusion of all records and sim details of mobile phones seized from the accused are instances of faulty investigation and the same would not affect the prosecution case. Non-production of CCTV footage, non-collection of call records (details) and sim details of mobile phones seized from the accused cannot be said to be mere instances of faulty investigation but amount to withholding of best evidence. It is not the case of the prosecution that CCTV footage could not be lifted or a CD copy could not be made.

28. As per Section 114 (g) of the Evidence Act, if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. The presumption under Section 114 (g) of the Evidence Act is only a permissible inference and not a necessary inference. Unlike presumption



under Section 139 of Negotiable Instruments Act, where the court has no option but to draw statutory presumption, under Section 114 of the Evidence Act, the Court has the option; the court may or may not raise presumption on the proof of certain facts. Drawing of presumption under Section 114 (g) of Evidence Act depends upon the nature of fact required to be proved and its importance in the controversy, the usual mode of proving it; the nature, quality and cogency of the evidence which has not been produced and its accessibility to the party concerned, all of which have to be taken into account. It is only when all these matters are duly considered that an adverse inference can be drawn against the party.”

Further in the case of **Vinubhai Haribhai Malaviya** (supra) the Hon’ble Supreme Court in paragraph no.38 thereof, relevant part of which is quoted hereinbelow has held as follows:

“.....What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate’s nod under Section 173(8) to further investigate an offence till charges are



framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a *prima facie* guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in **Hasanbhai Valibhai Qureshi** (supra).....”



So far as part of submission of the petitioner that on rejection of his application for anticipatory bail, because of the pandemic situation he could neither file an application for bail in the Patna High Court nor could he surrender in the learned Court below is concerned, the Court finds no merit in the same and thus also finds no merit in the prayer of the petitioner for quashing the order dated 18.5.2020 whereby process under section 82 Cr.P.C. has been issued.

In view of the facts and circumstances stated hereinabove and taking into consideration the judgment in the case of **Vinubhai Haribhai Malaviya**(supra), the petitioners are given liberty to file a petition in the learned Court below and in case such a petition is filed the same shall be considered and decided at the earliest by the learned Magistrate keeping in mind the provision of section 173(8) of the Cr.P.C. as also the judgment of the Hon’ble Supreme Court in the case of **Tomaso Bruno**(supra).

The writ application stands disposed of.

(Partha Sarthy, J)

Bibhash/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.3.2022
Transmission Date	

