

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.256 of 2018**

Arising Out of PS. Case No.-372 Year-2014 Thana- PATORI District- Samastipur

Shiv Kumar Rai Son of Radhe Rai Resident of Village- Chakrajali, P.S.  
Patori, District- Samastipur. ... .. Petitioner

Versus

1. The State of Bihar
2. Ram Sagar Rai
3. Kamlesh Rai
4. Ram Swarath Rai All Sons of late Jageshwar Rai
5. Sumit Raj
6. Kundan Kumar
7. Pappu Kumar All sons of Sri Ram Sagar Rai
8. Guddu Kumar
9. Ravi Raj Both Sons of Kamlesh Prasad Rai
10. Sufal Rai
11. Pankaj Kumar Both Sons of Sri Ram Swarath Rai  
All Resident of Village- Chakrajali, P.S. Patori, District- Samastipur.  
... .. Opposite Parties

**Appearance :**

|                       |   |                                |
|-----------------------|---|--------------------------------|
| For the Petitioner    | : | Mr. Vivekanand Vivek, Advocate |
| For the State         | : | Mr. Akhileshwar Dayal, APP     |
| For O.P. Nos. 2 to 11 | : | Mr. Vijay Anand, Advocate      |

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL JUDGMENT**

**Date : 13-07-2022**

Heard learned counsel for the petitioner, learned counsel for  
O.P. Nos. 2 to 11 and learned APP for the State.

2. This revision application has been preferred questioning  
the legality of the judgment and order of acquittal dated 19.12.2017  
passed by the learned Chief Judicial Magistrate, Samastipur in Trial No.  
418 of 2017 arising out of Patori P.S. Case No. 372 of 2014 whereby  
and whereunder the learned court below has acquitted the accused  
persons in absence of the prosecution witnesses.



3. As per the prosecution story, as stated in paragraph '3' of the petition, on 02.11.2014 at 07:45 P.M. fardbeyan of the informant was recorded in P.M.C.H., Patna in injured condition on bed stating therein that on 01.11.2014 the informant along with others were standing in queue at Pax Bhawan Chakaruali, Booth No. 5 to cast their respective votes on the occasion of Pax election. At about 07:45 A.M., the accused Ram Sagar Rai armed with Banna, Ram Swarath Rai armed with farsa, Kundan Kumar, Sumit Raj, Pappu Kumar, Sufal Kumar, Pankaj Kumar, Guddu Kumar and Ravi Raj armed with lathi, danda and bricks-stones reached there. Ram Sagar Rai asked the informant and others not to cast their votes. Their votes will be given by him. Upon which the informant told that he will cast his votes. Hearing this, Ram Swarath Rai ordered the other accused persons to assault the informant upon which the accused persons began to assault him with lathi, danda, bricks and stones. The informant cried to save him in the meanwhile Kamlesh Prasad Rai assaulted with Banna on the head of the informant and he fell down having sustained injury on his head and became unconscious. The son of the informant came there and disclosed that while the informant was being carried to on Safari Vehicle, the accused persons broke the glass of the vehicle and also assaulted the driver of the said vehicle Milan Kumar. Golden Chain and Rs.920/- of Govind Kumar was taken away by the accused persons. The cause of occurrence is that the accused persons were asking the informant and others not to cast votes in favour of other party.



4. After the investigation, police submitted a chargesheet against the accused persons and learned Magistrate vide his order dated 27.11.2015 took cognizance of the offences under Sections 147, 149, 341, 323, 342, 337, 338, 504 and 506 of the Indian Penal Code and decided to issue summons to O.P. Nos. 2 to 11.

5. It further appears that on 10.05.2016, the accusations were explained to the accused persons who denied the charges and claimed to be tried. The case was fixed for evidence. Thereafter, the records show that on 25.05.2016 summons were issued to the witnesses. The order dated 09.06.2016 shows that the service report of summon was not available on the record. The same situation continued till 28.06.2016. On 18.07.2016, the learned trial court decided to issue bailable warrant against the witnesses. This was in addition to summons but none of the reasons as mentioned under Section 87 of the Cr.P.C. for issuance of warrant in addition to summon is available in the order dated 18.07.2016 passed by the learned trial court. The order dated 02.08.2016 reiterates the previous order with a direction to the office to comply with the same. On 18.08.2016, non-bailable warrants were issued against the witnesses but again in this order there is no recording that either summons or the bailable warrants were duly served upon the witnesses. The records rather show that the non-bailable warrants were issued and the office clerk was reminded to issue non-bailable warrant on 18.08.2016. In the right hand side margin portion of the ordersheet, this Court finds an endorsement "Sir issued NBW to all witnesses"



made on 29.11.2017. It means the order for issuance of non-bailable warrant to the witnesses passed on 18.08.2016 was complied with after more than one year. After 29.11.2017, when the case was taken up on 07.12.2017 no service report of the non-bailable warrant was available but the learned trial court observed that a last opportunity is being given to the prosecution to produce the witnesses. On the very next date i.e. 16.12.2017, the prosecution evidence was closed. Thus, within 17 days from the date of issuance of non-bailable warrant, the prosecution evidence was closed. On 19.12.2017, the statements of witnesses were recorded under Section 313 Cr.P.C. and on the same date, they were acquitted from the charges and were released.

6. Learned counsel for the petitioner has assailed the impugned order on the ground inter alia that the learned trial court had acted in hot haste in passing the impugned order. No proper much less adequate opportunity was given to the prosecution to produce the prosecution witnesses. There was neither any service report of summon, bailable warrant or non-bailable warrant on the record nor the learned trial court called upon the concerned SHO as regards the status of execution of the warrants against the witnesses. This has resulted in injustice to the victims of the alleged crime.

7. Mr. Vijay Anand, learned counsel representing O.P. Nos. 2 to 11 has defended the impugned judgment. It is submitted that the prosecution was given sufficient opportunity to produce the witnesses



but when they failed to bring the witnesses, the court had no option but to close their evidence.

**8.** Learned APP for the State has supported learned counsel for the petitioner and submitted that in this case, learned trial court has acted in haste without ensuring from the records that the summons, bailable warrants and the non-bailable warrants have been duly executed against the witnesses.

**9.** Having regard to the submissions noted hereinabove and the materials available on the record, this Court is of the considered opinion that the learned trial court has not given adequate opportunity to the prosecution to produce the witnesses. The Court had lastly issued non-bailable warrant on 29.11.2017 but immediately on 16.12.2017 even as there was no service report on the record, the prosecution evidence was closed. The Court did not call upon the concerned SHO of the police station to show as to why the warrant has not been executed or in case it has been executed then the service report should be brought on the record. Nothing was done.

**10.** On perusal of the entire ordersheets as discussed hereinabove, this Court finds substance in the submission of learned counsel for the petitioner. Thus, the impugned order is hereby set aside and the revision application is allowed.

**11.** The learned trial court shall proceed with the trial afresh from the stage of framing of charge. The informant-petitioner shall



cooperate in early conclusion of trial by presenting himself and the other prosecution witnesses on the date fixed in the matter.

12. The application stands disposed of accordingly.

13. Let the lower court records be returned.

(Rajeev Ranjan Prasad, J)

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| AFR/NAFR          |            |
| CAV DATE          |            |
| Uploading Date    | 18.07.2022 |
| Transmission Date | 18.07.2022 |

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

