

Arising Out of PS. Case No.-147 Year-2015 Thana- SABAUR District- Bhagalpur

... .. Petitioner/s

Versus

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Pravin Kumar Sinha

For the Respondent/s : Smt Usha Kumari No-1

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 29-08-2023 1. The present revision application has been filed against the order dated 23-08-2017 passed in Sessions Trial No. 60 of 2016 by 2nd Additional District & Sessions Judge cum Special Judge, Bhagalpur whereby the petition dated 21/07/2017 filed by the informant-petitioner to recall P.W. 7 [Chhathu Mandal] for his re-examination and cross-examination and also to call for the show cause filed by P.W. 7 in the departmental proceeding has been rejected.

2. The facts of the case in brief is that Sessions Trial No. 60/2016 against the accused Constable / Amar Kumar Singh has arisen out of Sabour PS Case No. 147 of 2015 registered under Section 302 I.P.C., Section 27 of the Arms Act & Section 3 (ii)(v) of the SC/ST Act lodged on the statement of the petitioner/informant, who is the brother of the deceased-Sanjay



Kumar Das who was working as a Clerk at Sabour Police Station. The fardbyan/statement of the petitioner recorded on 27-07-2015 is that one Chaukidar namely, Md. Abbas informed the petitioner regarding an incident which had taken place with his brother Sanjay Kumar Das at the Police Station. The petitioner called the Officer-in-charge of the Police Station who informed him that his brother has sustained fire arm injury caused by one Constable -Amar Kumar Singh and was brought at Mayaganj hospital. The informant along with family members reached the hospital where in he found his brother in pool of blood, who subsequently died. Charge sheet has been submitted on 20-10-2015. During course of trial ten prosecution witnesses were examined and one prosecution witness no. 7 / Chhathu Mandal was examined and cross-examined on 01/03/2017 and the prosecution evidence was closed on 17-04-2017. The petitioner has filed a petition on 21/07/2017 for recall of P.W. 7 for his re-examination and also to call the show cause filed by P.W.7 in the departmental proceeding which is pending against him. The petition for recall dated 21/07/2017 has been rejected by the trial court and hence the present revision application has been filed.

3. Learned counsel for the petitioner submits that the



petitioner is the informant of Sabour PS Case No. 147 of 2015 and the brother of the petitioner died in the firing incident at Sabour Police Station. He was working as a Clerk with the Police Station. He was shot on chest by one Constable-Amar Kumar Singh from the rifle of another Constable namely Chhathu Mandal, who is P.W. 7 in the present sessions trial. He further submits that departmental proceeding is pending against P.W.7 in which he has filed his show cause. The show cause filed by Chhathu Mandal in the departmental proceeding was not available at the time of of his examination/cross-examination, which is relevant for the just decision of the case.

4. I have heard learned counsel for the parties and have gone through the impugned order. The evidence of P.W. 7 has been recorded on 01/03/2017 and thereafter he has been discharged. The learned trial court while rejecting the petition has arrived at the finding that the witness was discharged and no application for calling the show cause filed by P.W. 7 in the departmental proceeding was filed by the petitioner or the prosecution.

5. The scope of departmental proceeding is distinct from criminal trial. The accused is in jail since 28/07/2015 and all the prosecution evidence was closed in April, 2017.



Accordingly the trial court rejected the petition filed by the petitioner. The show cause filed by the P.W. 7 in the departmental proceeding is on record at Annexure-2 to this application. From perusal of the same it transpires that P.W. 7 in his show cause has stated that due to darkness the rifle of the accused -Amar Kumar Singh got exchanged with the rifle of P.W. 7 and the accused fired upon the deceased with the help of his rifle. This fact has been confirmed during the course of investigation and in the supervision of higher police authorities. P.W. 7 has denied his involvement in the crime and has submitted in the show cause that had he been involved he would have been made accused in under Section 120(B) /34 of the I.P.C. also.

6. Learned counsel for the petitioner has merely submitted that recall of P.W. 7 / Chhathu Mandal is necessary for just decision in the case.

7. In a judgment reported in (2016) 2 SCC 402 State (NCT of Delhi) v. Shiv Kumar Yadav it has been held that mere observation that recall was necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial would suffer without recall. Recall is not a matter of course and the discretion given to the court has to be exercised



judiciously to prevent failure of justice and not arbitrarily.

8. In the present case, the petitioner has failed to place any tangible reason before this court necessitating recall of P.W. 7.

9. Accordingly, I do not find any reason to interfere with the impugned order. This application is dismissed.

(Anil Kumar Sinha, J)

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