

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.43578 of 2015

Arising Out of PS. Case No.-29 Year-2008 Thana- BACHHWARA District- Begusarai

Sri Krishna Choudhary Son of Late Lakhan Choudhary, Resident of Village Rasidpur, P.S. Bachhwara, District Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Domi Yadav Son of Fakir Yadav
3. Ra Padarth Rai Son of Late Ram Bilash Rai
4. Sanjay Kumar Rai Son of Domi Rai All Resident of Village Rasidpur, Rashiyahi, P.S. Bachhwara, District Begusarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ratneshwar Prasad, Advocate
For the Opposite Party/s : Mr.Jitendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

5 02-03-2023 Heard learned counsel for the petitioner and the State.

The present petition has been preferred for quashing of the order dated 21.07.2015 passed by learned Additional Sessions Judge IVth, Begusarai in Sessions Trial (S.T.) No. 911 of 2008 arising out of Bachhwara P.S. Case No. 29 of 2008 by which the learned Additional Sessions Judge IVth, Begusarai has dismissed the petition under Section 317 Cr.P.C. dated 23.05.2015 filed by the petitioner (informant).

The Bachhwara P.S. Case No. 29 of 2008 was filed



under Sections 302, 324, 201 and 34 of the Indian Penal Code stating therein that on 07.03.2008, the informant son Deepak Kumar left his house stating that he will return on 09.03.2008. However, when he failed to return, the search was made and then it was found that the dead body has been found near Mouza Chiranjipur Chour which was identified text of his son. The further submission is that the petitioner's son was having affair with the daughter of the accuseds who had threatened him of dire consequences. Accordingly, the FIR was lodged.

The police investigated the matter and submitted charge sheet against them under Sections 302, 324 and 201 of the Indian Penal Code whereafter on 31.08.2008 the cognizance order was passed.

In this case, total eleven prosecution witnesses were examined/cross-examined and subsequently, the examination of prosecution witnesses as also defence was closed. It was at this stage that in 2015, a petition under Section 311 of the Cr.P.C. was preferred by the petitioner/informant stating therein that which finds recorded in the order in question as follows:

“4. The learned lawyer appearing on behalf of the petitioner submitted that the petitioner has come to know that the case is fixed for argument and in this regard the informant



consulted the private lawyer and verified the case then came to know that the case was being mishandled by the Additional P.P. and the case is of murder and the P.M. of the deceased was held by doctor R.B. Pd. M.B.B.S. P.M.C.H Patna which find place in para 85 of the C.D and there is no step taken by the P.P for his production in Court nor there is any S/R on record and in this case the I.O. cleverly did not mention the name of doctor on the list of witness in the C.S. hence it is mistaken at the part of prosecution and the I.O Ashok Kumar Singh has also been summoned or step were taken for his examination in Court and examination of two important witness should be procured for the end of justice and finally prays to take necessary steps for the examination of informant's two witnesses."

Learned Additional Sessions Judge IV, Begusarai after hearing the parties and perusing the materials on record vide an order dated 21.07.2015 held in paragraph 6:

"6. In the instant case I find that the accused persons have been charge under Sections 302 and 34 and 201, 34 of the Indian Penal Code on 11.02.2009 thereafter the case was fixed for prosecution evidence thereafter 11 witnesses were examined by the previous Court and statement of accused persons was recorded on 08.08.2014 by the previous Court but perusal of the record I



find on 12.06.2013 the summon to doctor and I.O. was issued and the case record was transferred to this Court on 13.10.2014 in the stage of defence evidence and on 18.12.2014 the defence evidence was closed but is surprising that a private lawyer has suddenly appeared and filled this petition but the learned private lawyer of the informant has never raised this issue before closing of prosecution evidence in previous court where the case was pending earlier and in the stage of argument of this case this petition was deliberately filed for causing delay to early disposal of the case. I find that it is duty of prosecution to take all necessary step for porcurring the attendance of witness. Since, the petition of informant has been filled in belated stage for no fault of the accused persons of this case and the informant remained silent for about three years which is not acceptable.”

The learned Court thus came to the conclusion that the petitioner lacks merit and accordingly dismissed.

Aggrieved, the present petition.

Learned counsel for the petitioner submits that he being the aggrieved party, he should have been heard and the prosecution witnesses inasmuch as the Investigating Officer and the Doctor should have been examined and failure to do so,



grave injustices has been made to him due to the incompetence of the Additional P.P.

He has cited a case of **Tirpan Singh Vs. The State of Bihar & Ors.** reported in **2002(1) PLJR 455** to submit that the Court has to entertained any petition preferred by the informant, the aggrieved party.

This Court is unable to understand the said submission put forward by the learned counsel for the petitioner. Here is an order of the learned Sessions Judge in which he has entertained the petition preferred by the petitioner and has reasoned out why the petition stands rejected.

Further so far as the case of **Devashish Bose Vs. The State of Bihar & Anr.** reported in **2001(4) PLJR 212** is concerned, learned counsel for the petitioner submits that Patna High Court in the aforesaid case observed that the any trial cannot go on indefinitely. This again does not come to his rescue inasmuch as the learned Trial Court closed the prosecution as well as defence witnesses and it went ahead with the trial and it is only the informant-petitioner herein who is trying to put spoke in the wheel and thus, delaying the said.

This Court does not find any merit in the petition. The order dated 21.07.2015 is a reasoned one.



Accordingly, the petition stands dismissed.

(Rajiv Roy, J)

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