

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.708 of 2022

Arising Out of PS. Case No.-179 Year-2015 Thana- SILAO District- Nalanda

Kislay Prasad Son of Ramrup Prasad Resident of Village - Silao, P.S.- Silao,
Distt.- Nalanda at Biharsharif.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal secretary Home Deptt. , Govt. of Bihar,
at Patna. Bihar
2. Rajat Roy Son of Sideshwar Prasad Singh Resident of Village - Baseria, P.s.-
Fatehpur, Distt.- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar Singh, Adv.
For the Respondent/s : Mr. Md. Nadim Seraj, GP5

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 18-04-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner has filed this writ petition seeking direction to the District & Session Judge, Nalanda at Biharsharif so that trial of Silao P.S. Case No.179 of 2015 pending for trial before Sri Rabindra Kumar, the learned Judicial Magistrate, 1st Class, Nalanda at Biharsharif (presently pending before learned Judicial Magistrate-VIII -cum- Addl. Munsif-VIII, Nalanda at Biharsharif) and Silao P.S. Case No. 180 of 2015 (S.Tr. No. 358 of 2016) pending before learned Addl. Sessions Judge III, Nalanda at Biharsharif, may run together before Sessions Court i.e. Addl. Sessions Judge-III, Nalanda at Biharsharif.

Counsel for petitioner fairly submits that the evidence in Sessions Trial No.358 of 2016 arising out of Silao P.S. Case No.180 of 2015 has been closed whereas the prosecution witness of Silao P.S. Case No.179 of 2015 is pending before learned Judicial Magistrate VIII -cum- Addl. Munsif-VIII, Nalanda at Biharsharif in which no evidence has been adduced as yet.

Counsel for petitioner submits that from the content of both F.I.Rs., it is crystal clear that both the cases have been filed from the same date and place of occurrence. Counsel submits that the witnesses of both the cases are more or less the same. Counsel submit that he is relying on a case of **Sudhir and others vs. State of M.P. with State of M.P. vs. Lavkush and others reported in (2001) 2 SCC 688** in which one case was triable by magistrate and another case was triable by Sessions Court, directed to club together by Hon'ble Supreme Court. In the said judgment, Hon'ble Supreme Court has pleased to hold that if the same situation arose with regard to case and counter case, they should be tied to the same Court and based on the same judgment, learned counsel has placed three different judgments which are as follows:-

1. Sanjay Kumar Vs. State of Bihar and Anr. passed in Cr. Misc. No. 24629 of 2016 with analogous cases.

2. Anandi Devi Vs. State of Bihar and Ors. passed in Cr. Revision No.1240 of 2012.

3. Ram Pratap Prasad & Ors. Vs. State of Bihar & Anr. passed in Cr. Misc. No.54057 of 2007.

Learned counsel for the State submits that from the argument of the petitioner himself, it transpires that in Sessions triable case, evidence is closed whereas in magisterial triable case, evidence has not started.

Learned counsel for State opposes the writ petition.

This Court is of the view that it is not two different events rather it is the same set of evidence which has been perceived by two opponent parties in their own frame of reference as the date and place of occurrence is identical that is to say, it is case and counter-case. This Court feels that in this view of the matter, it is necessary that both cases should be tied together that is before Sessions Court.

Counsel submits that he has filed transfer petition before the Sessions Court but it was rejected vide order dated 05.11.2019. Upon going through the order, it transpires to this Court that the said order is basically dismissed on default and not on merit.

In this view of the matter, ignoring the said order passed by the Sessions Court, this Court is directing to petitioner to file application before the Sessions Court afresh who shall consider all the judgments mentioned in this order and

pass order within 30 days to do all the needful so that both the trail shall run together.

With this direction, this Criminal Writ Application is hereby disposed of.

(Dr. Anshuman, J.)

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