

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.1156 of 2016

Arising Out of PS. Case No.-32 Year-1999 Thana- DIGHA District- Patna

Ram Balak Rai S/o Sri Anirudh Rai, R/v- Amrudi Bagicha, P.S.- Digha, Distt- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sunil Kumar, S/o Rajendra Rai, R/v- Digha Hatt, back of Aplana Cinema, P.S.- Digha, Distt- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Sinha
For the Respondent/s : Mr. Akshay Lal Pandit

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

- 8 18-08-2023 1. Heard learned counsel for the parties concerned.
2. The present criminal revision has been preferred against the order, dated 01.09.2016, passed by the learned Additional Sessions Judge IX, Patna, in Session Trial No. 58 of 2000, arising out of Digha Police Station Case No. 32 of 199, by which the prayer of the accused-petitioner for recalling of P.W. 2, Sunil Kumar (informant), was rejected.
3. The brief facts of the case is that on 26.02.1999, at about 05:15 PM, while the informant, along with his father, was going to the Digha Hatt, all six accused persons, including the petitioner, attacked and fired upon the father



of the informant, due to which he died.

4. Accordingly, First Information Report, bearing Digha Police Station Case No. 32 of 1999 (Annexure-1) was lodged. Charge-sheet was submitted on 27.05.1999 (Annexure-2) and cognizance was taken *vide* order, dated 29.06.1999, (Annexure-3) against all the six accused persons, including the petitioner, for the offences punishable under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act.
5. During the course of trial, the informant, namely, Sunil Kumar, was examined as Prosecution Witness No. 2, on 17.08.2002, and the case was adjourned on the prayer of the defence lawyer for cross-examination and the next date was fixed on 19.08.2002. The witness, i.e. P.W. 2 (informant), was present on the said date, but was not cross-examined by the defence lawyer rather, a time petition was filed on the behalf of the petitioner. Accordingly, the case was adjourned for 25.11.2002. On 25.11.2002, again the witness (P.W. 2-informant) was present, but on that date also, he was not cross-examined by the petitioner and as such the witness (P.W. 2-informant) was discharged.



6. Learned counsel for the petitioner submits that after discharge of the witness, on 25.11.2002, the petitioner along with other accused persons filed a petition for recalling the witness-informant for his cross-examination on the same day, but no order was passed by the learned Trial Court. As such, on 11.08.2016, the petitioner filed a petition under Section 311 of the Criminal Procedure Code, for recalling the witness i.e. P.W. 2, which was rejected and has been impugned in this revision petition. He further submits that due to lapses on the part of the Court, no order on the petition filed by the petitioner, for recalling the witness in the year 2002 was passed, subsequently, the petitioner filed another petition in the year 2016 for pressing the petition for recall of P.W. 2 filed in the year 2002 itself, which has been rejected on erroneous ground.
7. Learned counsel next submits that procedure under Section 304 of the Criminal Procedure Code was not followed and instead of providing legal aid to the petitioner, as per Section 304 of the Criminal Procedure Code, the learned Trial Court proceeded to discharge the witness. He relies upon the submissions made in the bail



order passed by a Division Bench of this Court in Criminal Appeal (DB) No. 876 of 2022 in this regard.

8. I have heard learned counsel for the parties concerned and have perused the impugned order. From perusal of the impugned order, it appears that ample opportunity was given to the accused persons, including the petitioner, for cross-examination of P.W. 2-informant, but they did not cross-examine P.W. 2-informant and on 25.11.2002, when the witness was present in the dock for cross-examination, the accused persons refused to cross-examine the witness and accordingly, the witness was discharged by the Trial Court.
9. According to the petitioner, on 25.11.2002 itself, the petitioner and other accused persons, total six in numbers, filed a petition for recalling the discharged witness, however, it is an admitted position that the said petition, under Section 311 of the Criminal Procedure Code, was not pressed by the petitioner and other accused persons, and the learned Trial Court proceeded further and other prosecution witnesses were examined. Ultimately, the prosecution witness was closed and the case was fixed on 01.09.2015 for recording of statement of the accused



persons under Section 313 of the Criminal Procedure Code.

10. It is at this juncture, after about one year from the aforesaid date, when the case was fixed for recording of statement of the accused persons, the petitioner, along with other accused persons, moved an application on 11.08.2016, for pressing the application, under Section 311 of the Criminal Procedure Code, filed on 25.11.2002. The learned Trial Court, taking note of the facts and the delaying tactics adopted by the accused persons, including the petitioner, has rejected the application for recall of P.W. 2 by the impugned order.
11. The Supreme Court, in the case of **Vinod Kumar v. State of Punjab**, reported in **2015 (3) SCC 220**, has observed that there is no cavil over the proposition that there has to be a fair and proper trial, but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the



trial is conducted as per law. It is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. It is inconceivable in law that the cross-examination should be deferred for such a long time. The duty of the Court is to see not only the interest of the accused as per the law is protected but also the societal and collective interest is safeguarded.

12. The present case is in respect of serious offence of murder in which the accused persons have been summoned and had been given adequate opportunity in the year 2002 itself for cross-examination of P.W. 2-informant, but despite the opportunity given to the accused-petitioner, it appears that in order to delay the trial, they did not cross-examine P.W. 2-informant and allowed the case to be proceeded further, in which the other witnesses were examined and cross-examined. The prosecution evidence came to be closed in the year 2015 and at the stage of recording of statement of the accused persons, under Section 313 of the Criminal Procedure Code, the petition filed for recall of the witness in the year 2002 was moved



and pressed in the year 2016 i.e. after a lapse of about 14 years.

13. From the record, it does not appear that before 2016, any step was taken by the accused-petitioner to press the application, dated 25.11.2002, for recalling P.W. 2 (informant).
14. The order of bail relied upon by the petitioner in Criminal Appeal (DB) No. 876 of 2022 is not applicable in the facts and circumstances of the present case.
15. Section 304 of the Criminal Procedure Code talks about a situation wherein the accused is not represented by a pleader and where it appears to the Court that the accused has no sufficient means to engage a pleader. In the present case, the accused-petitioner was represented by a pleader, but the concerned advocate did not cross-examine P.W. 2, despite given adequate opportunity.
16. This, in my opinion, is a delaying tactics on the part of the accused-petitioner.
17. Accordingly, I do not find any merit in this case. This application is, accordingly, dismissed.
18. The learned Trial Court is directed to conclude the trial of the case expeditiously in accordance with law within a



period of one month from the date of receipt/production
of a copy of this order on day-to-day basis, if the trial has
not concluded as yet.

AFR
ashwani/-

(Anil Kumar Sinha, J)

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