

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42731 of 2017

Arising Out of PS. Case No.-53 Year-1993 Thana- NAUGACHIA District- Bhagalpur

Rajeev Kumar Roy @ Rajeev Roy Son of Madho Roy, R/o Village- Telghi,
P.S.- Kharik, District- Bhagalpur.

... .. Petitioner

Versus

The State Of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Vikram Singh, Advocate

For the Opposite Party : Mr. Md. Arif, APP

Mr. Praveen Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 09-05-2023

This application has been filed for quashing of the order dated 09.06.2017 passed by learned 1st Additional Sessions Judge, Naugachia, in Sessions Trial No.336 of 2002, arising out of Naugachia (kharik) P.S. Case No. 53 of 1993, by which the petition filed by the petitioner under Section 311 of the Cr.P.C. has been dismissed.

As per the F.I.R. on 12.03.1993 at about 12:00 P.M. while the informant along with his brothers were harvesting crops in their field, the accused persons armed with different weapons came and assaulted them. In the said assault, two brothers of the informant died.

It has been contended by learned counsel for the petitioner that under threat of the accused persons the petitioner could not appear in the trial court. He filed applications before



the Superintendent of Police, Bhagalpur, D.I.G. Bhagalpur and the District Magistrate, Bhagalpur for providing security and when the petitioner was provided security he appeared before the trial court on 09.06.2017 he had filed an application under Section 311 of the Cr.P.C.

On a pointed question asked to learned counsel for the petitioner as to whether the petitioner had filed any application in the trial court for providing security, the learned counsel for the petitioner replied that the petitioner has not filed any application before the trial court for providing any security.

Learned counsel for one of the accused of the present F.I.R. namely, Laxmi Singh, has submitted that the sole intention of the petitioner/informant was not to examine himself in the trial and to keep the accused in custody. It has also been submitted that accused Laxmi Singh was sent to Jail in the year 2012. His bail applications were rejected successively by this Court and while rejecting the bail applications this Court had given direction to the trial court to conclude the trial and the this Court had also directed the Superintendent of Police, Bhagalpur to produce the witnesses. It has also been submitted that the accused - Laxmi Singh remained in custody for more than five years. Six witnesses were examined and the last witness was



examined on 04.07.2015. The petitioner/informant never appeared from 04.07.2015 to 08.06.2017. On 07.06.2017, the evidence of the prosecution was closed and on 09.06.2017 the statement under Section 313 of the Cr.P.C. was recorded and on the same day, an application under Section 311 of the Cr.P.C. was filed by the petitioner/informant. It has also been submitted that petitioner was watching the proceeding and not appearing in the proceeding of the trial court only because he wanted that the accused Laxmi Singh may not be released on bail.

I have considered the submissions of the parties. I have also perused the materials on record. In the impugned order, it has been recorded by the trial court that the petitioner/informant knowingly avoided to appear in the trial court for evidence and thereby caused harassment to the accused as the accused was in judicial custody from the very beginning and he was watching the proceeding and when the statement was recorded under Section 313 of the Cr.P.C. suddenly the petitioner/informant appeared and filed application under Section 311 of the Cr.P.C.

Section 313 of the Cr.P.C. reads as under :-

“313. Power to examine the accused. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any



circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons- case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub- section (1)

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.”

No doubt, the trial Court is empowered to examine



or recall and re-examine any such person whose evidence appears to be essential to the just decision of the case but, if the trial Court finds that the petitioner/informant was watching the proceeding and knowingly avoided to appear in the trial in order to delay the trial then the action of the petitioner/informant is malafide and not bonafide and the application on behalf of the petitioner with malafide intention under Section 311 of the Cr.P.C. should not be allowed.

In view of the aforesaid facts, I do not find any merit in this application. Accordingly, this application is dismissed. The Trail Court is directed to proceed with the trial and conclude the same expeditiously.

Let a copy of this order be communicated to the District Judge, Bhagalpur so that it may be forwarded to the concerned trial Judge for expediting the trial.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	27.06.2023
Transmission Date	27.06.2023.

