

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35841 of 2015

Arising Out of PS. Case No.-28 Year-2011 Thana- BELHAR District- Banka

Mukesh Kumar @ Mukesh Bhagat son of Yogendra Prasad Bhagat, resident of village Bela, P.S. Belhar, District Banka

... .. Petitioner/s

Versus

1. State Of Bihar
2. Ramji Bhagat @ Ramji Kumar son of Awadh Bihari Bhagat, resident of village and P.O. Bela, Via Belhar, P.S. Belhar, District Banka.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar Das No.- 2
For the Opposite Party/s : Mr.Kanhaiya Kishore-APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 28-02-2023 On 22.04.2016, a detailed order was passed in the

present case which is as follows:-

“The petitioner has been made accused in Belhar P.S. Case No. 28 of 2011 dated 24.03.2011 registered under Section 341, 323, 324, 307 and 379/34 of the Indian Penal Code (for short "IPC").

2. The FIR of Belhar P. S. Case No. 28 of 2011 is based on the oral statement of the informant Ramji Bhagat @ Ramji Kumar, made before the Assistant Sub-Inspector of Police of Belhar Police Station on 10.10.2010 at 6 am in Jawahar Lal Nehru Medical College & Hospital, Bhagalpur. In his oral statement, the informant has stated that he is an agent of Life Insurance Corporation and was going to Bhagalpur by amotor-cycle with one Hari Kishore Yadav of village Birgaon, P.S.- Belhar, District- Banka carrying Rs.35,000/- with him. As soon as he reached near the house of Yogendra Bhagat, he saw that the son of Yogendra Bhagat was beating she-goat of his elder brother Uday Kumar Bhagat. When the informant made an inquiry in this regard, the accused persons, namely, Yogendra Bhagat, Mukesh Bhagat (petitioner), Sailesh Bhagat @Munna Bhagat, Manoj Bhagat, Pawan Bhagat, Pankaj Bhagat @ Bansi Bhagat, Kiran Devi, Babita Devi rushed



towards him and started assaulting him with fists and slaps and lathi and dragged him to the courtyard, where accused Babita Devi gave an axe to her husband Mukesh Yadav who assaulted him with the axe on the posterior portion of the head causing bleeding injury, as a result of which, he fell down. result of wh PAT

3. The informant has further alleged that on hulla, when the son of Uday Kumar Bhagat came to his rescue, he was also abused and beaten by the accused persons. It has further been alleged that accused Pawan Bhagat snatched Rs.20,000/- and the accused Pankaj Bhagat took away Rs.15,000/- from the pocket of the informant.

4. The police investigated the case and on completion of investigation, the investigating officer of the case submitted charge-sheet against the petitioner for the offencespunishable under Sections 341, 323, 504/34 of the IPC and accordingly, cognizance was taken against the petitioner only under the above sections.

5. In course of trial, the informant was examined as P.W. 1 and thereafter, a petition was filed on behalf of the prosecution that the remaining charge-sheet witnesses have turned hostile and the informant do not want to examine them. A prayer was also made that instead of charge witnesses the prosecution may be allowed to examine seven non-charge sheet witnesses, namely, Bijay Kumar Bhagat, Bikash Kumar Bhagat, Shanti Devi, Sewa Yadav, Banarsi Yadav, Kishore Yadav and Pintu Bhagat. PAT

6. The said application was contested by the petitioner before the learned Magistrate. However, the learned Magistrate allowed the prosecution to examine the aforesaid seven witnesses in support of its case vide order dated 11.04.2014.

7. The aforesaid order dated 11.04.2014 was challenged by the petitioner in revision vide Cr. Revision No. 92 of 2014 and after hearing the parties, the learned 6th Additional District and Sessions Judge, Banka dismissed the said revision application vide order dated 26.02.2015.



8. *The aforesaid order dated 26.02.2015 is under challenge in the present application under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C").*

9. *It has been contended by the learned counsel for the petitioner that the impugned order is not sustainable in law as the revisional court has failed to appreciate the provision prescribed under Section 311 of the CrPC in proper perspective. He has contended that though Section 311 of the Cr.P.C gives discretion to the court to summon any witness in course of trial, the said power should be exercised only if examination of such witness appears to be essential to the just decision of the case. He has further contended that because of the fact that the charge-sheet witnesses were not willing to support the prosecution case, the prosecution could not have been allowed to examine any other witness h witness not connected with the case in any manner to prove its case against the petitioner. ATA*

10. *Regard being had to the submissions advanced at the Bar by the learned counsel for the petitioner, issue notice to opposite party no. 2 both by ordinary process as well as registered cover with A/D for which requisites, etc. must be filed within one week failing which the application shall stand rejected without further reference to a Bench.*

11. *Put up this case immediately after receipt of service report.*

12. *In the meantime, further proceedings in connection with Belhar P. S. Case No. 28 of 2011 pending before the learned Jurisdictional Magistrate, Banka shall remain stayed."*

Yesterday, learned counsel for the opposite party No. 2 had taken adjournment. Today, none appears for the opposite party No. 2.

Heard learned counsel for the petitioner and learned counsel for the State.

I have considered the submissions of the parties.



The informant has given up the witnesses who are not willing to support the prosecution case or who have been gone over by the defence for reasons best known to them.

In these circumstances, there is no illegality in the order. The petitioner has every right to cross-examine the witnesses who will be examined pursuant to the impugned order.

This application is dismissed.

(Sandeep Kumar, J)

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