

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1346 of 2019

Arising Out of PS. Case No.-110 Year-2017 Thana- BELAGANJ District- Gaya

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BASANT YADAV, Son of Late Deolal Yadav, Resident of Village- Lodipur
Tola Kanhil, P.S.- Belaganj, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Jai Ram Singh, Son of Late Jagarnath, Singh Resident of Village- Nehalpur,
P.S.- Belaganj, District- Gaya.
3. Subodh Singh, Son of Jairam Singh, Resident of Village- Nehalpur, P.S.-
Belaganj, District- Gaya.
4. Chintu Kumar, Son of Binod Singh, Resident of Village- Nehalpur, P.S.-
Belaganj, District- Gaya.
5. Girijesh Singh, Son of Subodh Singh, Resident of Village- Nehalpur, P.S.-
Belaganj, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Yadav, Advocate
For the Respondent/s	:	Mr. Syed Mojibur Rahman, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 05-03-2024

The instant revision is directed against an order dated 16th July 2019 passed in P.C. No. 367 of 2019 by the learned ACJM-11th Court, Gaya by which the Court complaint filed by the petitioner in connection with Belaganj P.S. Case No. 11 of 2017 was registered.

2. It is the case of the petitioner that, in connection with Belaganj P.S. Case No. 110 of 2017, the police filed a report in final form. Against the said report the petitioner filed a protest petition cum complaint which was registered as protest complaint



(P.C.) no. 367 of 2019. The learned Additional Chief Judicial Magistrate XI, Court, Gaya directed to proceed on the basis of protest cum complaint petition against the accused persons.

3. It is pertinent to note that the petitioner lodged a complaint before Belaganj police station stating, *inter alia*, that on 10th April 2017 at about 10:00 am, the private opposite party no. 2-5 jointly trespassed into the agricultural land of the complainant and cut wheat crops with the help of a harvest machine. Seeing the agitated mood of the accused persons, the complainant could not resist them. He rushed to Belaganj police station and narrated the entire incident to the SHO of Belaganj police station. Subsequently, the police force, attached to Belaganj police station came to the place of occurrence and arrested all the accused persons. They also seized the wheat crops which they had cut from the land. The complainant gave a written statement before the SHO, Belaganj based on which Belaganj P.S. Case No. 110 of 2017 was registered.

4. Police took up the case for investigation and on completion of the investigation, submitted a report in final form and exonerated all the accused persons of this case.

5. On 09th May 2017, the complainant submitted a protest cum complaint making his grievance that the police were not



investigating the case properly and he was apprehending that the accused might be released after investigation of the case.

6. The applicant also filed an application to release the seized wheat in his favour on 31st August 2017. The said application was rejected by the learned Magistrate vide order dated 14th December 2017. Subsequently, by an order dated 30th January 2019, the learned Additional Chief Judicial Magistrate, XI, Gaya, accepted the final report submitted by the Investigating Officer and at the same time, converted the protest petition filed by the petitioner into a complaint case.

7. The said complainant Case No. 367 of 2019 was dismissed vide an order dated 16th July 2019 by the learned Additional Chief Judicial Magistrate XI, Gaya on the ground that the petitioner/complainant did not appear for his initial examination under Section 200 of the CrPC on solemn affirmation. The said order dated 16th July 2019 is under challenge in the instant revision. The order dated 16th July 2019 runs thus:

“Complainant is absent. Despite repeated calls nobody appeared on behalf of complainant.

Perused the record. From which it appears that, the case has been fixed for S.A. for a long time but despite all reasonable opportunities accorded to complainant for the same he has not appeared before the court for S.A. Not only this he has left his pairvi in this case.



Thus, in the light of facts and circumstances discussed above I am of the view that, all reasonable opportunities have been provided to complainant for S.A. and complainant has lost his interest in this case.

As such, I do not find it proper to keep the record pending any longer for S.A.

In the result, the instant complainant petition is hereby dismissed.

O.C. is directed to consign the record as per Rule.”

8. I have carefully perused the lower court record which was called for at the time of the hearing. It is found from the order dated 31st October 2018 that on the said date, the informant was present. The accused persons filed *Vakalatnama* with a prayer to accept the final report. The date was fixed on 20th November for a hearing on the point of cognizance. Thus, the purport of the order dated 31st October 2018 which was passed in the presence of the informant, is that both the report in final form and the protest petition would be taken up by the trial court on the next date, i.e., on 20th November 2018 for hearing on the point of taking cognizance. Subsequently, the informant was absent on 20th November 2018, 7th December 2018, and 24th December 2018. He was only present on 16th January 2019, when the date was fixed on 31st January 2019 for hearing on the point of cognizance of the final report and/or taking cognizance on the points of the protest petition. On 30th January 2019, the final report was



accepted and the complainant was given an opportunity for hearing on the basis of his protest petition. Thereafter, a series of dates were fixed, i.e., on 18th February 2019, 13th March 2019, 10th April 2019, 6th May 2019, and 15th June 2019. On all dates the complainant remained absent. Finally, on 16th July 2019, the protest petition filed by the complainant was dismissed as he did not turn up for his examination under Section 200 of the CrPC.

9. On perusal of the lower court's record, this Court is of the view that the complainant was given more than adequate time to represent his case, however, he remained absent on each and every date and decided not to give a statement on solemn affirmation. Under such circumstances, the Court cannot sit idle as a mute spectator. A criminal case cannot be dragged and delayed at the instance of either the petitioner or the accused persons for an unlimited period. Considering such an aspect of the matter, I do not find any illegality in the impugned order.

10. Accordingly, the instant revision is dismissed.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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