

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.43 of 2024

Arising Out of PS. Case No.-140 Year-2021 Thana- JAGDISHPUR District-
Bhojpur

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Dharamshila Devi W/o Late Narad Mahto R/o vill - Siyarua, P.s. -
Jagdishpur, Distt. - Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Gov. of Bihar, Patna Bihar
2. The Principal Secretary, Dep. of Home, Gov. of Bihar, Patna Bihar
3. The Director, Directorate of Prosecution, Dep. of Home, Gov. of Bihar,
Patna Bihar
4. The District Magistrate, Bhojpur, Bihar Bihar
5. The Superintendent of Police, Distt. - Bhojpur, Bihar Bihar
6. The Registrar, District Civil Court, Bhojpur, Bihar Bihar
7. Sri Nagendra Singh, Additional Public Prsosecutor, Distt. Civil Court,
Bhojpur, Bihar Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh, Sr. Adv. Mr. Bimal Kumar, Adv. Mr.Dr. Pratyush Kumar, Adv.
For the respondent-State	:	Md. Mujtabaul Haque, GP-12
For the Respondent No.8	:	Mr. Bharat Bhushan, APP

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CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL ORDER

5 10-07-2024 Heard the parties.

2. The present criminal writ application has been preferred by the petitioner under Articles 226 and 227 of the Constitution of India assailing the order/direction dated 19.10.2023 passed in Sessions Trial Case No. 221 of 2021 by the Additional District and Sessions Judge-X, Bohpur, Ara, whereby the learned Sessions Judge closed the prosecution evidence



ignoring the order dated 20.01.2023, directing the prosecution to examine with prosecution witness Nos. 6,7 and 8, passed by his predecessor.

3. The only question for consideration before this Court is whether the learned Additional District and Sessions Judge-X, Bhojpur, Ara, while passing the impugned order dated 19.10.2023, disallowing the examination of prosecution witnesses, was empowered or having jurisdiction to review or recall or altered the earlier order passed by his predecessor in the same Session Trial.

4. The brief facts of the case is that on the basis of a written complaint made by one Vasistha Mahto, Police Station Jagdishpur lodged an F.I.R. being Crime No. 140 of 2021 under Section 302 read with 34 of the Indian Penal Code and Section 27 of the Arms Act against five accused persons and after completion of investigation, chargesheet was filed under Sections 302/120(B) read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, In the chargesheet, altogether ten witnesses have been cited as prosecution witnesses.

5. During course of trial on 31.03.2022, an application was filed by the prosecution stating therein that the prosecution does not want to examine the witness Nos. 6,7, and 8 i.e. Rajesh Bhagat, Vikas Kumar Rajak and Ramesh Kumar and given up said witnesses. Thereafter, statements of other witnesses were



recorded. Soon thereafter, the prosecution witness No. 4, namely, Chote Lal Kumar and prosecution witness No.5, namely, Dharamshila Devi, petitioner herein, along with Guptewhwar Kumar, who is the son of the deceased, made an application through their advocate on 22.09.2022 praying therein that to record the statements of the aforesaid three witnesses. After hearing all the parties, the learned Additional Sessions Judge-VIII, Bhojpur, Ara passed the order on 20.01.2023 (annexure-P/4) and allowed the said application directing the prosecution to examine those witnesses. The said order dated 20.01.2023 has been assailed by one Vasisth Mahto before this Court in Criminal Miscellaneous No. 23404 of 2023, which has, subsequently, been dismissed as withdrawn vide order dated 17.07.2023 passed by this Court.

6. During pendency of the aforesaid criminal miscellaneous case before this Court, pursuant to the order of learned District Judge, Bhojpur, Ara the record of Sessions Trial No. 221 of 2021 has been transferred from the Court of learned Additional Sessions Judge-VIII, Ara to the Court of learned Additional Sessions Judge-X, Ara on 23.03.2023. Accordingly, the record of the S.T. No. 221 of 2021 were sent to the Court of learned Additional Sessions Judge-X, Ara. Surprisingly, the learned Additional Sessions Judge-X, Ara on the request made by the learned Additional Public Prosecutor on 15.06.2023, closed



the prosecution evidence and fixed the sessions trial for recording the statements of the accused under Section 313 of the Cr. P.C. Hence, the present criminal writ application.

7. Learned senior counsel for the petitioner submits that once the learned Additional Sessions Judge-VIII, Ara allowed the application dated 22.09.2022 on 20.01.2023 and directed the prosecution to examine the prosecution witness Nos. 6, 7 and 8, therefore, even after transfer of the record of Sessions Trial No. 221 of 2021 to the Court of learned Additional Sessions Judge-X, Ara, he is not empowered to recall or rescind or reverse or amend the order passed by his predecessor. The learned Additional Sessions Judge-X, Ara has exceeded his jurisdiction while passing the impugned order as the learned Judge has no jurisdiction to review the earlier order passed by his predecessor. Therefore, on this ground only the impugned order dated 19.10.2023 passed by the learned Additional Sessions Judge-X, Ara is liable to be set aside. He further submits that the matter may be remanded to the concerned Trial Court i.e. learned Additional Sessions Judge-X, Ara to comply with the order dated 20.01.2023 passed by his predecessor and to record the statement of witnesses Nos. 6, 7 and 8.

8. I have heard learned senior counsel for the petitioner as well as learned counsel for the respondent-State and perused both the orders as referred above and also gone



through the documents annexed with the writ petition.

9. Undisputedly, on the basis of application made by the petitioner, who is victim, along with other prosecution witnesses, the learned Additional Sessions Judge-VIII, Ara directed the prosecution to examine the witness Nos. 6, 7 and 8 in S.T. No. 221 of 2021. Subsequent to passing of the order, the record of S.T. No. 221 of 2021 has been transferred to the Court of learned Additional Sessions Judge-X, Ara and when the matter was taken up on 15.06.2023, surprisingly, the learned Additional Sessions Judge-X, Ara on the basis of request made by the learned A.P.P. rescinding the order dated 20.01.2023 passed by his predecessor closed the prosecution evidence vide order dated 19.10.2023. While passing such order, learned Additional Sessions Judge-X, Ara did not consider the earlier order passed by his predecessor i.e. learned Additional Sessions Judge-VIII, Ara which clearly shows that he passed such order by ignoring /overlooking the earlier order passed by his predecessor and reviewed the order passed by his predecessor regarding summoning of three prosecution witnesses which is not permissible in the eye of law. The learned Additional Sessions Judge-X, Bhojpur, Ara while passing the impugned order appears to have acted as a revisional Court without having revisional jurisdiction. He ought not to have exceeded its jurisdiction by review the impugned order passed by its predecessor.



10. Resultantly, the impugned order dated 19.10.2023 passed by the learned Additional District and Sessions Judge-X, Bhopur, Ara in connection with S.T. No. 221 of 2021 is liable to be set aside and is, hereby, set aside.

11. Accordingly, the matter is remanded back to the learned Additional Sessions Judge-X, Bhojpur, Ara to firtly comply with the order passed by the learned Additional Sessions Judge-VIII, Bhojpur, Ara dated 20.01.2023 and secondly, to conclude the trial of Session Trial No. 221 of 2021 as early as possible in accordance with law.

12. With the aforesaid direction, this criminal writ application is allowed.

(Arvind Singh Chandel , J)

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