
(2014) 09 PAT CK 0081

In the Patna High Court

Case No : Criminal Miscellaneous No. 48516 of 2013

Bhushan Yadav and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 225, 301

Citation : (2015) CriLJ 1076

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Rajesh Kumar Singh, Rana Pratap Singh and Ranvijay Narain Singh, Advocates for the Appellant; Jharkhandi Upadhaya, A.P.P, Advocates for the Respondent

Judgement

Ashutosh Kumar, J.—Heard Mr. Rajesh Kumar Singh, learned counsel for the petitioners. The State is being represented by Mr. Jharkhandi Upadhaya.

2. Nobody appears on behalf of the opposite party No. 2.

3. The petitioners have questioned the order dated 26-10-2013 passed in Sessions Trial No. 290 of 2012 whereby the learned IInd Additional Sessions Judge, Gopalganj has allowed the petition filed on behalf of the informant on 27-9-2013 for not examining the witness namely, Munshi Ram, whose attendance had been filed by the Public Prosecutor conducting the case on behalf of the State. In the aforementioned Sessions Trial, the Court had been trying accused persons accused of the charge of murder. After the submission of the charge-sheet in the case, charges were framed on 2-4-2013 against two accused persons. Till 27-9-2013 seven witnesses had been examined and cross-examined whereafter those witnesses were discharged.

4. On 27-9-2013 one of the eye-witnesses of the case, namely, Munshi Ram showed up before the Trial Court and got his attendance marked by the Public Prosecutor. However, before he could be put into the witness box, an application

was filed by the privately engaged lawyer of the defence that the witness be not examined as a prosecution witness. The trial Court, considering the fact that the prosecution is handled by the office of the Public Prosecutor, asked for clarification from the Public Prosecutor as to under what circumstances a privately engaged lawyer on behalf of the informant objected to the examination of Munshi Ram as a prosecution witness in this case. Pursuant to such direction by the Trial Court, a rejoinder was filed by the Public Prosecutor admitting that attendance had been filed on behalf of the aforesaid witnesses and that he, (the witness) during the course of investigation, had supported the prosecution version.

5. The learned trial Court after going through the application filed on behalf of the informant and the Public Prosecutor allowed the prayer of the defence of not examining Munshi Ram as a prosecution witness. The trial Court held that, in the interest of justice, aforesaid Munshi Ram be not examined as prosecution witness but if the defence so required he could be examined as a defence witnesses to help the Court come to the truth.

6. The aforesaid order is under challenge.

7. Mr. Rajesh Kumar Singh appearing on behalf of the petitioner vehemently argued that on a conjoint reading of Sections 225 and 301 of the Code of Criminal Procedure, there does not remain a scintilla of doubt that the prosecution is to be conducted at the instance of the Public Prosecutor and not anybody else. He has further submitted that a privately engaged lawyer can be permitted to assist the Public Prosecutor but he cannot be allowed to control the proceedings. Mr. Singh buttresses his submission by referring to a judgment rendered by the Hon"ble Apex Court in the case of Shiv Kumar v. Hukum Chand, reported in 1999 (7) SCC 457.

8. Paragraph 13 of the aforementioned judgment is very instructive and deals with the scheme of the Code so far as it relates to conducting a criminal case in a Sessions Court, which reads thus:--

"From the scheme of the Code the legislative intention is manifestly clear that prosecution in a Sessions Court cannot be conducted by anyone other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in Sessions Court. A public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the Court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal. On the contrary, it is the duty of the Public Prosecutor to which it to the fore and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the Court if it

comes to his knowledge. A private counsel, if allowed a free hand to conduct prosecution would focus on bringing the case to conviction even if it is not fit case to be so convinced. That is the reason why Parliament applied a bridle on him and subjected his role strictly to the instructions given by the Public Prosecutor".

9. After referring to the aforesaid judgment of the Apex Court, learned counsel for the petitioners further submits that unless the control of conducting a case on behalf of the prosecution is allowed to remain with the Public Prosecutor, a privately engaged lawyer on behalf of the informant would in all probability convert the proceedings into a playground where objectivity would be a completely casualty. There are lurking dangers of the proceedings getting degenerated into a mudslinging match. After having said so, Mr. Singh refers to the factual position of the case wherein other witnesses who have been examined as prosecution witnesses have also stated about Munshi Ram having witnessed the occurrence. It was, thus, argued that the learned trial Court, in complete disregard of the scheme of the Code with respect to the conduct of criminal cases, allowed the prayer of the informant with an unnecessary flourish that, if so advised, aforesaid Munshi Ram could be examined as a defence witness. The order, therefore, as argued by him, is unsustainable in the eye of law. He further prays for, apart from setting aside the order, to issue direction to the Court below for examining Munshi Ram as a Prosecution Witness.

10. Contesting such argument, Mr. Jharkhandi Upadhyaya, learned Advocate for the State, has very pithily suggested that a broader proposition of law cares for the choice of a witness on behalf of the parties. The prosecution, in its wisdom, is the sole arbiter for deciding as to which witness should be brought forth for taking the prosecution version to its logical conclusion. Any direction by the Court, much less this Court, would be seen as an attempt to hijack such liberty of the prosecution.

11. In the case in hand, it is not in dispute that the Public Prosecutor, handling the case on behalf of the prosecution, had filed the Hazri of Munshi Ram. This obviously presupposes the fact that the Public Prosecutor had chosen to put Munchi Ram in witness box on behalf of the prosecution. Munshi Ram was precluded from being examined as prosecution witness not at the instance of the Public Prosecutor but at the behest of privately engaged lawyer on behalf of the informant. What happened in the Court below, one can very well imagine. The Public Prosecutor was made to sit tight and the proceedings were eventually controlled by privately engaged lawyer. True it is, that witnesses to be examined at the trial either on behalf of the prosecution or the defence are the choice of the respective sides. Only the respective parties are in a position to assess as to which witnesses can take their case to a logical conclusion. Any interference by any third agency would be uncalled for. However, in a situation like this where the might of a party prevented the proceedings to be conducted in a proper manner, the Trial Court ought to have acted with dispatch and should not have

remained a mute spectator to such happenings. The job of the trial Court in such a situation is more than that of an umpire and he should have, with his experience as a Senior Judge, put his foot down. It is a matter of common knowledge that witnesses are at times won over. However, such presumptions cannot control the provisions of law. Had the trial Court been slightly more vigilant to its position and powers, it would have, instead of asking the defence to examine Munshi Ram as one of its witnesses, leading to such an unseemly furor, elected to examine Munshi Ram as a Court witness. This would have had a twin advantage for the Court. By one stroke of pen, the trial Court would have assessed the mind set of the parties in insisting for non-examination of a particular person as a prosecution witness and over emphasizing on the requirement of the same person being examined as witness by the other side. Such over enthusiasm on the part of the parties clearly reflected that the purpose of objecting to either a witness's examination or his non-examination as a prosecution witness was not so much for eliciting the truth of the matter but to garner evidence in their respective side. Such efforts ought to have been nipped in the bud. This could have been done very easily by the trial Court by electing to examine such a witness as a Court witness.

12. After having said so, the order impugned cannot be sustained in the eyes of law. The trial Court appears to have been completely overawed by the submissions on behalf of the privately engaged lawyer on behalf of the informant.

13. The order is, therefore, set aside. The case is remitted back to the Trial Court for writing out a fresh order in accordance with law.

14. This Court would be loathe in issuing any positive direction to the trial Court which is in seisin of the matter with respect to passing orders on a petition filed by the parties. Law with regard to conduct of Sessions Trial is provided under Sections 225 and 301 of the Code of Criminal Procedure. The trial Court, which has by far examined the witness on behalf of the prosecution, is in a better position to assess the nature and quality of the evidence which might come hereafter. The trial Court has also seen the demeanor of the witnesses and the conduct of the parties while conducting the case. It has been submitted on behalf of the petitioners that one of the accused persons is behind the bars for considerable long period of time. The trial Court would not cause any further delay in disposing of the case. Keeping all that has been said in the order, the trial Court would pass necessary orders, deciding for himself as to how the evidence of Munshi Ram be brought on record. Such decision has to be given by the trial Court within a period of 15 days from the receipt/production of this order.

The application stands allowed with the aforesaid observations.