

(2010) 11 PAT CK 0069

In the Patna High Court

Case No : Criminal Miscellaneous No. 43134 of 2006

Janki Sharan Mahto

APPELLANT

Vs

The State of Bihar, Krishna Prasad

RESPONDENT

Date of Decision : 09-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239, 482

Citation : (2010) 11 PAT CK 0069

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Judgement

Akhilesh Chandra, J.—Heard learned Counsel for the Petitioner and Additional Public Prosecutor for the State.

2. This is an application u/s 482 of the Code of Criminal Procedure seeking quashing of order dated 25.08.2006 passed in Trial No. 1747 of 2006 arising out of Dalsingsarai P.S. Case No. 87 of 2005 passed by Sri Jai Ganesh Singh, Judicial Magistrate, 1st Class, Dalsingsarai, refusing the prayer of the Petitioner made u/s 239 of the Code of Criminal Procedure through a petition dated 05.07.2006.

3. During course of arguments, by virtue of Annexure-2 i.e. Para- 35 of the case diary learned Counsel for the Petitioner tried to laid emphasis that during investigation no illegality was found while organizing the meeting of Gram Sabha/ Gram Panchayat and apart from the above it is submitted that from the impugned order it does not appear that court below has considered the materials collected during investigation and mentioned in the case diary. Learned Additional Public Prosecutor after initial hesitation was left with no option, but to concede that impugned order is not a speaking one.

4. When one petition seeking discharge is filed by the accused persons, the trial courts are required to pass speaking order mentioning some materials prima facie supporting the allegations, but they cannot discharge their legal obligation by passing a non-speaking and evasive order.

5. Since much time has already been lapsed and learned Counsel for the Petitioner is not in a position to make this Court aware whether charges have been framed and witnesses have been examined before the trial court.

6. Considering the above, only in the event of non commencement of trial the court below is directed to provide an opportunity of fresh hearing to the Petitioner and pass appropriate order on the prayer of the Petitioner u/s 239 of the Code of Criminal Procedure. It is further made clear that even if one single witness is examined no fresh hearing or order is required but in that event court below must proceed expeditiously and conclude the trial at the earliest. With the above observation and liberty this application stands disposed of.