

(2006) 07 PAT CK 0011

In the Patna High Court

Case No : Criminal Revision No. 529 of 2006

The State of Bihar

APPELLANT

Vs

Suraj Singh @ Suraj Bhan Singh and Others

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Arms Act, 1959 — Section 25(1B)(a), 26, 27

Criminal Procedure Code, 1973 (CrPC) — Section 232, 311, 313

Penal Code, 1860 (IPC) — Section 307, 34, 353

Citation : (2006) 4 PLJR 241

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : P.K. Shahi and S. Dayal, for the Appellant; Rana Pratap Singh and Sunil Kumar Sharma, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—State being aggrieved by the order dated 29.5.2006 passed by the Additional Sessions Judge, Fast Track Court No. IV, Begusarai in Sessions Trial No. 275 of 1993, declining the prayer made by the prosecution to examine the prosecution witnesses u/s 311 of the Code of Criminal Procedure, hereinafter referred to as the Code, has preferred this revision application. Short facts giving rise to the present application are that on the basis of statement given by the Assistant Sub-Inspector of Police, Begusarai Police Station case under Sections 353 and 307/34 of the Indian Penal Code and Sections 25 (1B)(a), 26 and 27 of the Arms Act was registered against the accused persons. According to the prosecution, accused persons resorted to firing on a police party by semi-automatic rifle and countrymade pistol when the police party raided the premises where the accused persons were hiding and making planning to commit crime. Police after investigation submitted charge-sheet and the case was ultimately committed to the Court of Sessions. Charges were framed on 19.6.2002 and although several opportunities were given to the prosecution to lead evidence but not a single witness was examined to support

the case. Ultimately by order dated 10.3.2006 prosecution evidence was closed and the statement of all the three accused persons were recorded. Thereafter the case was adjourned for orders to 31.3.2006 u/s 232 of the Code. It is only after the case was posted for orders u/s 232 of the Code that the prosecution woke up and filed application on 13.3.2006 with attendance of five witnesses seeking permission to reopen the case and examine the witnesses u/s 311 of the Code. In the application it was stated that witnesses in fact had turned up on 10.3.1996 but due to late running of the train, they could not appear in time. It seems that the said application was placed for consideration before the Incharge Court and in the order-sheet it noted the fact of five witnesses being present. The learned Judge adjourned the case to 31.3.2006 directing the witnesses to furnish personal bond. Thereafter the witnesses furnished the personal bond and the order-sheet does indicate that the same were accepted. Later on, it seems that the learned Judge realised that he is only an Incharge Court and therefore, ought not to have passed any order and thereafter scored out the order-sheet of the said date and passed a fresh order adjourning the case to 13.4.2006, stating therein that the Presiding Officer of the Court is on casual leave.

2. I had inquired from the Registry, the name of the Incharge Additional Sessions Judge, Fast Track Court No. IV, Begusarai on 13.3.2006 and it has been reported that Shri Bashishta Kumar Shukla was the Incharge. The conduct of the Officer in scoring out the order-sheet is unbecoming of a Judicial Officer. It is in the realm of surmises and conjecture as to why after signing the order he scored out the same. In case, being an Incharge Court he later on realised that he was expected to pass only routine orders, he ought to have indicated the same. It is not expected of a Judicial Officer to sign the order and then score it out without indicating anything. This creates doubt in the mind of the litigant. Justice must not only be done but appear to have been done is deeply engraved in our system. The learned Judge while scoring out the orders forgot this basic principle.

3. On the adjourned date i.e. 13.4.2006, prosecution filed attendance of six witnesses. The learned Judge adjourned the case for hearing on the application filed by the prosecution u/s 311 of the Code for examination of the witnesses to 17.4.2006. The learned Judge heard the application on several dates and ultimately by order dated 29.5.2006 rejected the prayer of the prosecution, inter alia, holding that the prosecution was highly negligent and "it failed to produce even a single witness in spite of the fact that about four years was given to it for producing witnesses but it failed without any reasonable cause".

4. In fairness to the learned Advocate General, he candidly submits that although prosecution was given several opportunities to examine witnesses but in the background of the fact that on the day when the prosecution filed application for reopening of the case and examining the witnesses, five witnesses were present, the learned Judge ought to have allowed the application of the prosecution and examined the witnesses.

5. Mr. Rana Pratap Singh, Senior Advocate, appearing on behalf of the Opposite

Party however, contends that whether such an application deserves to be allowed or not is within the discretion of the trial Court and when it had exercised its discretion grounded on sound principle, same is not fit to be interfered with by this Court in its revisional jurisdiction. In support of his submission, he has placed reliance on a judgment of the Supreme Court in the case of State (Delhi Administration) Vs. Vishwanath Lugnani and Others, and my attention has been drawn to paragraphs 2 and 3 of the judgment which reads as follows:-

2. Rejecting the revision petition, the High Court points out:

The prosecution had taken four years before the committing Court to examine three prosecution witnesses and had taken fifteen months to produce 14 witnesses.

"3. It may be debatable whether some of the general observations made in the two orders were unwarranted, we are of the opinion that in the circumstances of the case the order of the Additional Sessions Judge cannot be questioned as wrong or unreasonable and that the High Court was perfectly justified in affirming it.

6. Mr. Singh, further points out that after close of the prosecution case the accused persons have already been examined u/s 313 of the Code, and, as such, it is not a fit case in which the application filed u/s 311 of the Code is fit to be allowed and the learned Judge rightly rejected the application.

7. Having appreciated the rival submission, I do not have the slightest hesitation in accepting the broad submission of Mr. Singh that the issue in question is primarily within the discretion of the trial Judge and the revisional Court ordinarily does not interfere with exercise of such discretion unless compelling reasons are shown, it is the duty of the Court to seek that no innocent person is harassed but at the same time no guilty should be absolved. In order to achieve that Court possesses the power to reopen the case and examine the witnesses if it considers necessary for just decision of the case. A Judge is expected not to be pro-prosecution or pro-defence.

8. Here in the present case the evidence of the prosecution was closed on 10.3.2006 and the case was posted for orders on 31.3.2006. Before the said date, on 13.3.2006 an application was filed by the prosecution to reopen the case and examine the witnesses and in fact five witnesses were in attendance. In such circumstance, I am of the opinion, the revisional Court erred in rejecting the application of the prosecution. I am further of the opinion that for the just decision of the case, examination of the witnesses were necessary and the trial Court failed to exercise its jurisdiction.

9. For the reasons stated above, the order impugned cannot be allowed to stand.

10. As the trial is pending since long, the prosecution shall examine all its witnesses within six weeks from the next date fixed in the case and for that purpose the learned Judge in session of the trial shall conduct the trial on day to

day basis.

11. Sessions Judge. Begusarai, shall ensure compliance of this order. In the result, the application is allowed, impugned order is set aside with the direction aforesaid.