

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.71 of 2023

Arising Out of PS. Case No.-224 Year-2011 Thana- MASHRAK District- Saran

Annu Devi & Anr.Petitioner
Versus
The State of Bihar & Ors.....Respondents

with

RIMINAL MISCELLANEOUS No. 2228 of 2024

Arising Out of PS. Case No.-224 Year-2011 Thana- MASHRAK District- Saran

Annu Devi & Anr.Petitioner
Versus
The State of Bihar & Ors.....Opposite Parties

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IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.71 of 2023

Arising Out of PS. Case No.-224 Year-2011 Thana- MASHRAK District- Saran

1. Annu Devi Wife of Late Munna Singh Resident of Village- Gonhiya Chapra, P.S.- Bairya, District- Balia, State- Uttar Pradesh
2. Upendra Kumar Singh, Son of Late Tribhuvan Narayan Singh, Resident of Village and P.S.- Masrakh, District- Saran, State- Bihar

... .. Petitioners

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar Old Secretariat, Patna
2. The Additional Chief Secretary, Department of Home, Government of Bihar Old Secretariat, Patna
3. The Law Secretary, Department of Law, Government of Bihar Old Secretariat, Patna
4. The Director General of Police, Bihar, Patel Bhawan, Nehru Marg, Patna
5. The District Magistrate-cum-Collector, District Saran at Chapra
6. The Superintendent of Police, District Saran at Chapra
7. The Public Prosecutor, Sessions Court at Civil Court, District Saran at Chapra
8. The Additional Public Prosecutor of Sessions Trial No. 78/2015, Sessions Court at Civil Court District Saran at Chapra
9. Kedar Singh @ Kedar Nath Singh, Son of Late Vasudev Singh, Member of Legislative Assembly of Bihar from Baniapur Constituency. Resident of Barahiya Tola, P.S.- Masrakh, District- Saran
10. Sudhir Singh son of Dinanath Singh, Resident of Barahiya Tola, P.S.- Masrakh, District- Saran
11. Dinanath Singh son of Late Vasudev Singh, permanent r/o village- Barahiya Tola, P.S.- Masrakh, District- Saran. Presently- Serving punishment of imprisonment as convict in Hazaribagh Jail, District- Hazaribagh, State- Jharkhand

... .. Respondents

with

CRIMINAL MISCELLANEOUS No. 2228 of 2024

Arising Out of PS. Case No.-224 Year-2011 Thana- MASHRAK District- Saran

1. Annu Devi W/o- Late Munna Singh, Resident of Village-Gonhiya Chapra, PS Bairya Dist- Balia State- Uttar Pradesh
2. Upendra Kumar Singh S/o- Late Tribhuvan Narayan Singh, Resident of Village & PS- Masrakh Dist- Saran, Bihar

... .. Petitioners

Versus



1. The State of Bihar through its Chief Secretary, Old Secretariat, Patna
2. The Additional Chief Secretary, Dept. of Home, Old Secretariat, Patna
3. The Law Secretary, Dept of Law, Old Secretariat, Patna
4. The Director General of Police, Bihar, Patel Bhawan, Nehru Marg, Patna
5. The District Magistrate-cum-Collector, Saran at Chapra
6. The Superintendent of Police, Saran at Chapra
7. The Public Prosecutor, Sessions Court at Civil Court, Saran at Chapra
8. The Additional Public Prosecutor of Sessions Trial No. 78/2015, Sessions Court at Civil Court, Saran at Chhapra
9. Kedar Singh @ Kedar Nath Singh S/o- Late Vasudev Singh Member of Legislative Assembly of Bihar from Baniapur Constituency, Resident of Village- Barahiya Tola PS- Masrakh Dist- Saran
10. Sudhir Singh, Son of Dinanath Singh, Resident of Village- Barahiya Tola PS- Masrakh Dist- Saran
11. Dinanath Singh, Son of Late Vasudev Singh, Resident of Village- Barahiya Tola PS- Masrakh Dist- Saran Presently serving punishment of imprisonment as convict in Hazaribagh Jail Dist- Hazaribagh, Jharkhand

... .. Opposite Parties

Appearance :

(In Criminal Writ Jurisdiction Case No. 71 of 2023)

For the Petitioner/s : Mr. Amit Narayan, Advocate
Mr. Abhigyan Kumar, Advocate
Ms. Ritika Roy, Advocate
Mrs. Sneha Kumari, Advocate

For the Respondent/s : Mr. P.K. Shahi, AG
Mr. P.N. Sharma, AC to AG

(In CRIMINAL MISCELLANEOUS No. 2228 of 2024)

For the Petitioner/s : Mr. Amit Narayan, Advocate
Mr. Abhigyan Kumar, Advocate
Ms. Ritika Roy, Advocate
Mrs. Sneha Kumari, Advocate

For the R/No. 9 : Mr. Rajendra Narayan, Sr. Advocate
Mr. Praijat Saurav, Advocate

For the R/No. 10 : Mr. Basant Kumar Chaudhary, Sr. Advocate
Mr. Shashi Bhushan Kumar, Advocate

For the State : Mr. Satya Nand Shukla, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT**

Date : 01-02-2024

The criminal writ application and criminal
miscellaneous case being connected with each other between the



same parties were tagged by this Court vide order dated 08.01.2024 passed in Cr.WJC No. 71 of 2023 and have been heard. By this common judgment both the applications are being disposed of.

Cr.WJC No. 71 of 2023

2. The petitioner no.1 in the present writ application is the wife of the deceased Munna Singh who was engaged as bodyguard of petitioner no.2 (in short P-2). Late Munna Singh was allegedly shot dead for which a case being Masrakh P.S. Case No. 224 of 2011 dated 17.12.2011 under Sections 302/34, 307/34, 324/34, 341/34, 120B, 147, 148, 379/34, 353/34 of the Indian Penal Code and Section 27 of the Arms Act was registered. Respondent nos. 9 to 11 are the accused of the said case.

3. It is the case of the petitioners in the writ application that during investigation three persons, namely, Upendra Singh (PW 2), Sanjay Kumar (PW 5) and Maheshwar Singh (PW 1) recorded their statement under Section 164 of the Code of Criminal Procedure (hereinafter referred to as the CrPC). A copy of the statements have been enclosed as Annexure '2'. The accused persons were chargesheeted vide Charge-sheet No. 196 of 2012 dated 26.08.2012 and order taking cognizance was passed on 03.02.2013 by the learned Judicial Magistrate, First Class, Chapra. Thereafter, it took three years in committing the case to the court of learned Sessions



Judge, Saran. From 19.02.2015 till 07.12.2021 i.e. after a period of more than six and half years, the charges were framed against respondent nos. 9 to 11. On 07.12.2021, the learned Additional Sessions Judge-II-cum-MP/MLA Special Judge, Saran at Chapra framed charges against the accused persons for the offences punishable under Sections 302/34 of the Indian Penal Code. The case is pending trial.

4. It is stated that the accused persons are highly influential persons. One of the accused (R-9) is a sitting Member of the Legislative Assembly of Bihar from Baniapur constituency and another accused namely, Dinanath Singh (R-11) is influential person whereas the third accused, respondent no.10 is the son of respondent no. 11.

5. It is further stated that respondent no.11 has been convicted recently by the Hon'ble Supreme Court of India in connection with Masrakh P.S. Case No. 62 of 1995. Attention of this Court has been drawn towards the judgment of the Hon'ble Supreme Court in the case of **Harendra Rai Vs. State of Bihar and Others** decided on 18.08.2023 reported in **2023 SCC OnLine SC 1023**. In the said case, the brother of respondent nos. 9 and 11 of this case, who was a political leader and sitting Member of Parliament, at the relevant time was an accused. The Hon'ble Supreme Court found that he had influenced and won over almost all the witnesses of fact



mentioned in the charge-sheet, the relevant formal witnesses including the Investigating Officer were not produced in the trial by the prosecution and the Public Prosecutor prosecuting the case was supporting the defence.

6. The Hon'ble Supreme Court further noticed that the said accused got the Court witness, namely, Lalmuni Devi mother of deceased Rajendra Rai abducted 10 days before the date fixed for recording her statement. This led to filing of Habeas Corpus petitioner before the High Court, a report was submitted by the Hon'ble Inspecting Judge and there were comments upon the judgment of acquittal by the learned trial court.

7. It is submitted that the judgment of the Hon'ble Supreme Court in the case of **Harendra Rai** is being placed before this Court to demonstrate that how the accused persons are influential and can go to any extent to ensure that the trial results in their acquittal.

8. Learned counsel has further submitted that in this case PW-1 Maheshwar Singh was examined on five dates and his evidence has been recorded in 112 paragraphs. He was an eye witness to the occurrence and a victim of the case. He had given a separate written information (Annexure '1') for institution of the FIR but no FIR was registered on his information. The petitioners have a grievance over the conduct of the Public Prosecutor who has been



engaged to conduct the trial. He has submitted that PW-2 Upendra Singh, who is the informant and petitioner no. 2 in this case, was examined on five dates and his evidence has been recorded in 163 paragraphs. He was an eye witness of the occurrence. Similarly, Kapoor Nath Sharma who was posted as SHO, Masrakh Police Station and is an eye witness of the occurrence had appeared as PW-3. Learned counsel points out that while examining him, the prosecution deliberately and strategically did not state the name of any accused in his examination-in-chief. He merely named accused Kedar Nath Singh and only then, when he was asked in cross-examination by defence. The prosecution, according to learned counsel for petitioners, could have re-examined him, thereupon he could have been declared hostile as it was evident that PW-3 being an eye witness of the entire occurrence had been deliberately not disclosing the identity of the accused persons and was supporting the accused persons.

9. It is further submitted that PW-4 Ashok Kumar Singh, who was a seizure list witness, was present in the hospital when the seizure list was prepared regarding the articles seized from the body and belongings of the deceased. PW-5 Sanjay Kumar was examined who did not support the case of the prosecution and deviated from his earlier statement made under Sections 161 and 164 CrPC but he was neither declared hostile nor re-examined by the learned Additional



Public Prosecutor. This PW-5 has in his cross-examination alleged against the police for forcing and torturing him to give a tutored statement under Section 164 CrPC still he was not re-examined and declared hostile.

10. Learned counsel submits that PW-6 Kanhaiya Kumar, was a seizure list witness and has not supported the case of the prosecution, he deviated from his earlier statement made under Sections 161 CrPC but the Additional Public Prosecutor did not apply for his re-examination and further to declare him hostile. Consequently, the prosecution case was being damaged and the accused were favoured. As regards PW-7 Dr. Anisur Rahman stated that he examined the injured Maheshwar Singh. He proved the injury on the body of Maheshwar Singh. In his cross-examination, he did not support the prosecution and presented a complete concocted story but the Additional Public Prosecutor did not apply for his re-examination and to declare him hostile.

11. Learned counsel submits that the petitioner no. 2 filed a petition before the learned trial court/the State authorities on different occasions pointing out the misconduct of the learned Public Prosecutor in damaging the prosecution case. It is alleged that in an attempt to favour the accused persons, the prosecution filed an application before the learned trial court seeking permission to examine six non-chargesheeted witnesses on its behalf and it was



immediately agreed upon by the defence. The defence gave it's no objection. Petitioner no. 2 filed his reply bringing on record the earlier misconduct which took place in the trial and pointed out how the prosecution of this trial is being damaged and tutored witnesses are going to be examined with consent of defence who shall depose against the prosecution and the learned Additional Public Prosecutor would attest their testimony by not declaring them hostile. The petitioners had also apprised the authorities of the State about the aforesaid misconduct by the written communications but those were not paid heed to.

12. Learned counsel for the petitioners, therefore, prayed for an inquiry against the present Public Prosecutor (R-7) and the Additional Public Prosecutor (R-8) in Sessions Trial No. 78 of 2015 for their alleged role in damaging the prosecution and in connivance with the accused with motive to support the accused thereof. Further prayer has been made in the writ application to direct the State respondents to appoint an experienced Advocate of integrity as Special Public Prosecutor to appear in the proceeding and to conduct prosecution of trial in connection with (Saran) Masrakh P.S. Case No. 224 of 2011.

13. There are other prayers in the writ application including that the Special Public Prosecutor be granted liberty to apply to the learned trial court for the production of witnesses who



are necessary to be examined in support of the prosecution; and also to apply for recall of the witnesses who have earlier deposed against the prosecution and have not been declared hostile.

14. It appears from the records that vide order dated 09.10.2023, this Court directed issuance of notice to respondent nos. 9 to 11 whereafter respondent nos. 9 to 10 appeared through *vakalatnama*. This Court was informed that respondent no. 11 had gone for treatment to AIIMS, New Delhi. The notice was received in the Jail office in presence of Nazir of Civil Court, Hazaribagh. This Court while adjourning the matter recorded that respondent no. 11 who is the father of respondent no. 10 may, in the meantime, enter appearance and file his counter affidavit as well.

15. On 08.01.2024, this Court was informed that an application under Section 407 CrPC has been filed by the petitioners for transfer of the trial from Chapra court to Patna court. At this stage, this Court was also informed that though a decision has been taken to appoint Special Public Prosecutor in this case but it has not been done properly and without examining the credentials, a Special Public Prosecutor has been appointed without the consent of the learned Advocate General.

16. On 12.01.2024, Mr. P.K. Shahi, learned Advocate General appeared on behalf of the State. Respondent Nos. 9 to 11 were also represented through Mr. Vindhyachal Singh, learned senior



counsel assisted by Mr. Vipin Kumar Singh, learned Advocate. On the said date, learned Advocate General for the State informed this Court that when an application was submitted by the petitioner no. 2 in his office after the order of this Court, he had sent the same to the State Government for an appropriate decision and had pointed out that the matter requires immediate attention. Learned Advocate General submitted that what had happened earlier in Masrakh P.S. Case No. 62 of 1995 would be required to be avoided as the Hon'ble Supreme Court has very seriously indicted all the stakeholders including the State for not conducting the trial in a fair and proper manner. After hearing learned Advocate General, this Court formed an opinion that learned Advocate General should call for the records in which the appointment of Special Public Prosecutor has been dealt with, examine the same and after proper evaluation and assessment of the credentials of not only the appointed Special Public Prosecutor but even others who may be available either in this Court or in any district court may be considered for engagement as a Special Public Prosecutor. The competence and integrity would be at the top of the parameters while considering such appointments. On the said date, Mr. Vindhyachal Singh, learned senior counsel on instruction submitted on behalf of respondent nos. 9 to 11 that he would not contest the appointment of Special Public Prosecutor and it is for the prosecution to appoint a Special Public Prosecutor of their choice.



Learned senior counsel for the private respondents has submitted that lawyers should be of the choice of the State Government not of the petitioners. The petitioners, if they are victims, have got right to appoint their counsel with the permission of the court.

17. It is, thus, evident from the order passed on 12.01.2024 that the private respondent did not oppose the appointment of new Special Public Prosecutor as suggested by the learned Advocate General as per the choice of the State Government.

18. In the hearing held on 23.01.2024, learned Advocate General informed this Court that he was not satisfied with the manner in which an Additional Public Prosecutor was named by the Minister of Law as Special Public Prosecutor. No reason had been assigned as to why the another Additional Public Prosecutor, who has been entrusted with the brief after removal of the first Public Prosecutor, had been removed. Learned Advocate General also found that the Law Secretary had clearly opined that keeping in view the aim and object to ensure a fair, transparent and impartial trial, he was of the view that Shri Dayanand Rai, learned Additional Public Prosecutor may be permitted to continue with the Sessions Trial but when the note was placed before the Minister of Law, he wrote for a discussion and then discussion was held, thereafter the Law Secretary put another note in which while he reiterated his views, also gave an alternative note saying that “or any other may be appointed as



Special Public Prosecutor from the list recommended by the District Magistrate, Saran as proposed in paragraph '2' at previous page 4-5/N on his own behest of your goodself.”

19. Further this note was placed before the Minister of Law who chose a name placed at Serial No. 17 and appointed him as Special Public Prosecutor. The learned Advocate General informed this Court that in the present case, the State would like to proceed with the trial maintaining all fairness and transparency and any iota of suspicion or doubt of the informant need be removed, therefore, he is of the considered opinion that to ensure a fair trial, a Special Public Prosecutor be appointed from amongst practicing lawyers of this Court and further for this purpose, he has worked out on some of the names. This Court was assured that learned Advocate General will take appropriate steps to ensure that a Special Public Prosecutor be appointed in this case at the earliest. In the hearing held on 29.01.2024, the learned Advocate General informed this Court that he has already suggested the State Government to appoint Mr. Ajay Mishra, learned Additional Public Prosecutor of this Court as Special Public Prosecutor in the trial court and an appropriate order to this effect is likely to come very soon.

20. In view of the developments which have taken place during the pendency of the writ application, the stand of learned Advocate General for the State of Bihar and the stand of learned



Senior counsel representing respondent nos. 9 to 11, there being no contest on the point of engagement of a Special Public Prosecutor, this Court is of the considered opinion that the issue with regard to the appointment of a Special Public Prosecutor stands resolved. Learned counsel for the petitioners has expressed his satisfaction with the stand and steps taken by learned Advocate General in the matter of appointment of a Special Public Prosecutor from this Court. Therefore, this Court need not go into the kind of allegations made in the writ petition against the earlier Additional Public Prosecutor who was conducting the trial and leave it open for the competent authority to look into the same in accordance with law.

21. It is directed that the State Government shall notify the name of the Special Public Prosecutor as suggested by learned Advocate General within two weeks from today. The learned Special Public Prosecutor who will be conducting the trial shall proceed in the matter in the best interest of the prosecution. The State Government, the District Magistrate and S.P. Saran at Chapra shall provide all logistic support to the learned Special Public Prosecutor.

22. The writ application, thus, stands disposed of accordingly.

Cr. Misc. No. 2228 of 2024

23. This application has been filed under Section 407 CrPC seeking transfer of Sessions Trial No. 78 of 2015 pending



before the learned Additional Sessions Judge-VII-cum-MP/MLA Special Judge, Saran at Chapra to another criminal court of equal jurisdiction of Civil Court, Sadar, District-Patna i.e. MP/MLA Special Judge, Patna. It is stated that Sessions Trial No. 78 of 2015 arises out of Masrakh P.S. Case No. 224 of 2011 dated 17.12.2011.

Prosecution case

24. The prosecution case as disclosed by the informant (P-2) is that his wife namely, Kumari Madhubala Singh was a member of the Panchayat Samiti Chandkudariya Bhag-I. Earlier also his wife had contested election of *Pramukh* and lost it by three votes. This result disturbed many of her political opponents. P-2 claimed that previously he had given written information to the concerned Station House Officer (SHO) and other higher officials regarding attempt of extortion made to him but no action was taken. On 17.12.2011 at 11:45, wife of P-2 was inside the meeting hall of the Block Office, Masrak and P-2 with his bodyguard Munna Singh was standing outside along with other persons, namely, Maheshwar Singh, PW 2, Sanjay Kumar, PW-5 and Mr. Thakur and persons. It is stated that Mr. Thakur went towards the meeting hall then MLA Kedar Singh with Government and private bodyguards went there who could be identified and all of them assaulted Mr. Thakur. PW-2 and others requested higher officials to order disturbing elements to leave the meeting hall. It is stated that MLA Kedar Singh ordered his



Government and private bodyguards to use criminal force and as a result of which, they did it. Thereafter, P-2 asked his wife and others to boycott the meeting, consequently, all came outside. It is alleged that MLA returned with his bodyguards thereafter P-2 informed DSP, SP about the alleged occurrence through the mobile phone. Abruptly, MLA Kedar Singh (O.P.-9), Dinanath Singh (O.P.-11) and Sudhir Singh (O.P.-10) came with their government and private bodyguards. They were angry. P-2 told the SHO, Masrakh Police Station who was present there with the accused persons that the accused persons may commit any crime but the SHO calmed P-2 to relax saying that he was there. Suddenly, accused Dinanath Singh (O.P.-11) ordered to kill the informant thereafter he himself shot at the informant (P-2). In the meantime, Munna Singh bodyguard of informant came in front of him in order to save him and sustained firearm injury on his hand. It is alleged that thereafter the informant (P-2) fled near the wall to save himself then it is alleged that accused MLA Kedar Singh and Sudhir Singh shot one bullet each upon the bodyguard of the informant who was writhing. Thereafter, Dinanath Singh took the revolver of Munna Singh from his waist and started searching of the informant. In the meantime, additional police force arrived and seeing this, the accused persons fled away. The informant claimed that the occurrence occurred at 02:45 P.M. which has been seen by Maheshwar Singh, Sanjay Kumar and others.



25. This Court has already taken note of the subsequent developments which have taken place during investigation of the case. Three witnesses, namely, informant himself (PW-2), Sanjay Kumar (PW-5) and Maheshwar Singh (PW-1) got recorded their statement under Section 164 Cr.P.C. on 17.01.2012. The charge-sheet was filed against accused persons on 26.08.2012 under Sections 147, 148, 149, 341, 323, 324, 353, 307, 302, 379 and 120B IPC and Section 27 of the Arms Act. Cognizance was taken on 03.02.2013 and the case was committed to the court of Session on 19.02.2015.

26. Learned counsel submits that after six and half years, the learned Additional Sessions Judge-III-MP/MLA Special Court at Chhapra framed charges against Opposite Party Nos.9 to 11 and fixed 21.12.2021 for evidence of the prosecution.

27. The facts, which have already been taken note of while dealing with the CrWJC No. 71 of 2023 have been reiterated in the miscellaneous application as well. Learned counsel for the petitioners has, in course of his submission, highlighted the manner in which the prosecution has conducted this case in the trial court. Learned counsel has drawn the attention of this Court towards the objections filed on behalf of the informant in the learned trial court from time to time pointing out as to how the prosecution witnesses have not been properly examined and they were, in fact, allowed to go discharged with an intention to confer benefit to the defence. Learned counsel



submits that from the order dated 30.05.2022 passed by the learned trial court, it would appear that on behalf of the informant, a petition was filed saying that the charge-sheet named witnesses, namely Sanjay Kumar and Kanhaiya Kumar have been gained over in collusion with the accused persons, therefore, informant does not want to examine them. Prayer was made to expunge the name of Sanjay Kumar and Kanhaiya Kumar from the list of witnesses. This petition was taken on the record by the learned trial court, but despite that on 14.06.2022 learned Additional Public Prosecutor produced Sanjay Kumar as P.W. 5 and examined him. The Additional Public Prosecutor refused to received a copy of the application, hence no order was passed by the learned trial court.

28. Learned counsel further submits that again on behalf of the informant, a petition was filed on 23.07.2022 for adjournment of the case to enable him to go to High Court but on the said date learned Additional Public Prosecutor produced both the witnesses and they were examined and cross examined.

29. Learned counsel submits that from the application dated 06.08.2022 filed by the informant in the learned trial court, it would appear that the informant pointed out to the learned trial court that P.W.5, namely Sanjay Kumar, had got recorded his statement under Section 164 Cr.P.C. before the learned Judicial Magistrate, Saran but in course of his deposition in this case, he deviated from



his earlier statement. The learned Public Prosecutor did not think it just and proper to draw his attention towards his statement under Section 164 Cr.P.C. This would show that the learned APP was acting hand in glove with the defence and he was damaging the prosecution case. It is stated in the petition that during the examination-in-chief of Sanjay Kumar (PW 5) on 23.07.2022, learned counsel for the informant repeatedly requested the learned APP to draw the attention of the witnesses towards their earlier statement made before the Police and the learned Judicial Magistrate but it was not done. The informant seriously questioned the intention of learned APP in this case and alleged that the learned APP was working in collusion with the defence.

30. Learned counsel further submits that a separate application dated 06.08.2022 was filed on behalf of the informant, highlighting that one of the witnesses Kanhaiya Kumar had been named in the charge-sheet as seizure list witness only. He had signed the seizure list dated 17.12.2011. This seizure list had already been proved by P.W.3 Sri Kapoor Nath Sharma, S.H.O. and the same had been exhibited as Exhibit '9', therefore, there was no reason for the Additional Public Prosecutor to examine said Kanhaiya Kumar as a charge-sheet witness. There was no statement of this witness under Section 161 Cr.P.C. with regard to occurrence in the case diary.



31. Learned counsel for the informant further submits that the informant had filed one application in the learned court below for filing of a complaint against PW-5 for giving a fabricated and false evidence in judicial proceeding. Relying upon the judgment of the Hon'ble Supreme Court in the case of **K. Anbazhagan v. Superintendent of Police, Chennai and Others** reported in (2004) 3 SCC 767, learned counsel submits that in the said case which was filed seeking transfer of the criminal trials against the then Chief Minister of Tamil Nadu from the court of learned 11th Additional Sessions Judge (Special Court No. 1) Chennai in the State of Tamil Nadu to a Court of an equal and competent jurisdiction in any other State, the Hon'ble Supreme Court had occasion to consider the case laws on the subject. In the case of **Gurcharan Dass Chadha versus State of Rajasthan** reported in AIR 1966 SC 1418, the Hon'ble Supreme Court has held that a case may be transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. Similarly, it is submitted that in the case of **Maneka Sanjay Gandhi and Another versus Rani Jethmalani** reported in (1979) 4 SCC 167, the Hon'ble Supreme Court has held that assurance of a fair trial is the imperative of the dispensation of the justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like



mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitated if the court is to exercise its power of transfer.

32. Reliance has also been placed upon the judgment in the case of **Abdul Nazar Madani v. State of T.N. and Another** reported in **(2000) 6 SCC 204** to submit that the performance of criminal trial is to dispense order of impartial justice uninfluenced by extraneous consideration.

33. It is submitted that considering the materials placed before this Court and taking into consideration the circumstances which are showing that the opposite parties being highly influential persons and bearing political clout have been able to influence the course of justice, hence, this Court may direct the transfer of the trial to the court of equal and competent jurisdiction in the Civil Court, Sadar, Patna.

Stand of Opposite Party Nos. 9 & 10

34. A counter affidavit has been filed on behalf of Opposite party no. 9 claiming that while filing the chargesheet in this case, the then BDO, Masrakh, CO, Marhoura, SDPO Masrakh and other government officials, three constables and the Anchal Guards who were present at the place of occurrence and some of whose statements were recorded in the case diary were not made witnesses



by police. Out of 13 witnesses, Mr. Thakur had passed away. The prosecution has examined the other 11 chargesheet witnesses except Mr. Aditya Paswan (the then Deputy Director, FSL, Patna.) who retired in the year 2013 to prove that the FSL report was prepared on the direction of Mr. Aditya Paswan. The prosecution has examined one Binod Kumar Pal, PW-12 who is Assistant Director of FSL, Patna. It is, thus, the case of O.P. No. 9 that the prosecution has examined all its witnesses and, therefore, the transfer petition may be dismissed on this ground alone. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Pal Sing and Another versus Central Bureau of Investigation and Others** reported in **(2005) 12 SCC 329**.

35. It transpires from a reading of the counter affidavit that the O.P. No. 9 has discussed the deposition of the prosecution witnesses and has made submissions on the merit of the statement. This Court is of the considered opinion that at this stage, this Court need not look into the rival contentions as regards the quality of evidences adduced by the prosecution. Relying upon the judgment in the case of **Shiv Kumar versus Hukam Chand and Another** reported in **(1999) 7 SCC 467**, it is submitted that the Hon'ble Supreme Court has held in the said case that role of PP, APP is to be fair to both the sides and it is not for him to secure conviction by concealing material facts from the learned trial court.



36. It is stated in paragraph '28' of the counter affidavit that so far as the issue of appointment of a Special Public Prosecutor is concerned, from the orders passed in Cr.W.J.C. No. 71 of 2023, it would appear that the State Government has agreed to appoint a new independent Special Public Prosecutor preferably from Patna and therefore, the grievance of the petitioners against the previous PP/APP must be duly redressed. It is also pointed out that after the Amendment of 2009 in Cr.P.C., now the prosecution is allowed to engage private counsel for assisting the prosecution and the rights of such private prosecution counsel has been enhanced. The petitioner no.2 has engaged two Advocates namely Sri Triyogi Nath Singh and Sri Sanjay Singh as his counsel who are regularly appearing on each and every date in the trial. It is also pointed out that learned Advocate appearing for petitioner no.2 have been convicted on 13.06.2017 in Sessions Trial No.762 of 2006 arising out of Garkha P.S. Case No.29 of 2005 under Sections 307/149 IPC, Section 27 of the Arms Act and Sections 3/4 of the Explosive Substances Act. Sanjay Singh has been granted post-conviction bail *vide* order dated 17.07.2017 passed in Cr. Appeal (SJ) No. 1911 of 2017 and Shri Triyogi Nath Singh was then not granted privilege of bail. Later, he was granted privilege of post-conviction bail by this Court *vide* order dated 19.09.2018 on medical grounds. It is stated that Sri Triyogi Nath Singh is fit and healthy to conduct the trial on behalf of petitioner no.2-informant.



37. The Opposite Party No.9 has denied that he influenced the trial. It is sated that none of the witnesses have made any allegation regarding any kind of pressure/fear/influence, if any exerted by Opposite Party No.9 or other accused in this case, no untoward incident has happened with any of the witnesses since the date of registration of the FIR in the present case.

38. It is further stated that so far as the petitioner no.1 is concerned, she is neither a witness in trial nor she is informant of the case, therefore, there is no question of her being under threat. The Opposite Party No.9 has denied the allegation that delay in trial is attributable to the defence party.

39. Learned counsel further submits that there is a counter version of the case bearing Protest-cum-Complaint Case No. 2079 of 2013 (arising out of Masrakh P.S. Case No. 15 of 2012 and Sessions Trial No. 382 of 2018) filed by one Lalti Devi. Attention of this Court has been drawn towards the order passed by this Court in Cr. Misc. No. 42443 of 2018. It is stated that in the light of the said order, the Session Trial No. 382 of 2018 has been transferred. On query made by this Court as to whether both the trials have been merged or are being held together, this Court has been informed that the trials are separate.

40. Mr. Rajendra Narayan, learned Senior Counsel for the Opposite Party No.9, has strongly argued that at this stage when a



Special Public Prosecutor has already been suggested by the learned Advocate General and the Opposite Party No.9 is not opposing the appointment of a Special Public Prosecutor from this Court, no reasonable apprehension may be found in the submissions of the petitioners for the purpose of transfer of trial at this stage.

41. Mr. Basant Kumar Chaudhary, learned Senior counsel, has appeared on behalf of Opposite Party No. 10. Learned Senior Counsel submits that he would adopt the submissions advanced by learned Senior counsel on behalf of the Opposite Party No. 9 and has placed before this Court Section 407 Cr.P.C. to submit that for the purpose of ordering transfer of trial from one criminal court to another criminal court, the High Court has to satisfy itself with the following conditions:-

- “(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or
- (b) that some question of law of unusual difficulty is likely to arise; or
- (c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice.....”

42. It is submitted that in the present case, there is no allegation against the learned trial court. There is no submission on behalf of the petitioners that a fair and impartial trial cannot be held by the present court at Chapra who is in seisin of the trial.



43. Nothing has been brought to the notice of this Court to show that it is expedient to transfer the trial from Saran to Patna.

Stand of the State

44. Mr. P. K. Shahi, learned Advocate General assisted by Mr. P. N. Sharma, learned Advocate submits that so far as the prayer seeking transfer of the trial is concerned, he would neither support the petitioner nor the accused persons and in his opinion, it is for this Court to consider the facts and circumstances of the case to arrive at a conclusion as to whether the trial requires transfer from Chapra court to Patna court.

Consideration

45. Having heard learned counsel for the parties and on perusal of the records, this Court finds that the petitioners have moved this Court for transfer of the trial by filing the present petition on or about 11.01.2024. Prior to that, exactly a year back the petitioners had moved this Court seeking appointment of a Spl. Public Prosecutor. The petitioners raised their grievance against the manner in which the trial was being conducted by learned Additional Public Prosecutor in the learned trial court. From the records, it would appear that the charges were framed against the three accused (O.P. Nos.9 to 11) on 07.12.2021. This Court has perused the orders passed by learned trial court on various date. The learned trial court has recorded in its order dated 21.12.2021 that no prosecution



witness was produced on the said date when the records were fixed for evidence. On 07.01.2021, the first prosecution witness namely Maheshwar Prasad Singh was examined. From the order dated 11.02.2022, it appears that on the said date PW 1 was examined. His signature on the application submitted by him in Mashrakh police station and on the statement made by him under Section 164 Cr.P.C. were marked as Ext.1 and 2 respectively. This witness was partly cross-examined on behalf of the defence. The witness was again cross-examined on 21.02.2022 and 24.02.2022. On 21.02.2022, a petition was filed on behalf of the defence to call for the case diary recorded from 17.12.2011 (8.00 am) to 22.12.2011 (8.00 am). After allowing the informant to file a rejoinder to the said petition, the learned trial court allowed the application and the prosecution was directed to produce a copy of the station diary fixing 11.03.2022 for evidence.

46. On 28.02.2022, although there was no date fixed in the matter, but the informant filed an application for providing him security and sought direction in this regard to Superintendent of Police, Saran. The learned trial court directed to keep the application on the record and asked the informant to press the application on the date fixed in the matter. On 11.03.2022 again PW-1 was partly cross-examined. The case diary of the given dates which were required by the learned trial court was made available on 14.03.2022. On this



date, PW-1 was discharged. On 24.03.2022, the witness was not present, hence, the Additional Public Prosecutor prayed for an adjournment.

47. On 06.04.2022, Upendra Kumar Singh who is petitioner no.2 in this case examined himself as PW-2. He was examined, his signature on the written complaint was marked as Ext.-3. His signature on the statement recorded under Section 164 Cr.P.C. was marked as Ext. 4 and this witness also identified the signature of Sanjay Kumar (PW-5) on his statement recorded under Section 164 Cr.P.C. PW-2 proved the signature of Sanjay Kumar on the seizure list and the signature of Maheshwar Singh on the seizure list as Ext.6/1. PW-2 was partly cross-examined on the said date. PW-2 was further cross-examined on 23.04.2022, 27.04.2022, 07.05.2022 and 12.05.2022. He was discharged on 12.05.2022. On 20.05.2022 since there was no witness the learned Public Prosecutor prayed for time which was allowed and the trial was fixed on 30.05.2022. On 30.05.2022, there was no witness but the learned APP prayed for issuance of summons to the remaining charge-sheet witness which was allowed. On this date, the informant filed an application for expunging the name of Sanjay Kumar and Kanhiya Kumar from the list of witnesses which was taken on the record. The matter was fixed on 14.06.2022. On the said date, Kapur Nath Sharma (PW-3) was examined. He proved the inquest report (Ext.7)



and the seizure list. The defence cross-examined PW-3 and this witness was discharged on the same day. The defence got station diary of the case exhibited through this witness with objection as Ext.B. On 22.06.2022, PW-4 Ashok Kumar Singh was examined who proved his signature on the seizure list dated 17.12.2011 as Ext.11 and the signature of Kanhaiya Kumar on the same seizure list as 11/1. He also proved his signature on the second seizure list which was prepared at 22.00 hours. This witness was examined and cross-examined on 22.06.2022 whereafter he was discharged.

48. From the records it would appear that on 04.07.2022, learned trial court issued summons to the official witnesses. The office was directed to issue summons to the Doctor through the Civil Surgeon and summons to the I. O. through the S.P. On 11.07.2022 the prosecution produced Sanjay Kumar and Kanahiya Kumar as prosecution witnesses but because the court was on leave therefore, the evidence could not be recorded. This is the point where the informant objected and alleged that these two witnesses had gone in collusion with the defence. The informant filed a petition on 23.07.2022 saying that he would go to the Hon'ble High Court against the order passed by the trial court on his petition dated 30.05.2022 and prayed for adjournment. Learned APP, however, refused to receive this application on behalf of the informant. On the said date Sanjay Kumar (PW 5) was examined. He got his



application dated 17.11.2011 exhibited as Ext. 13. PW 5 was cross-examined and discharged on the said date.

49. At this stage it is worth mentioning that one of the grounds taken by the petitioners for purpose of this case is that PW-3 who was an eye witness and S.H.O. of Mashrakh Police Station deliberately and strategically did not state the name of any accused and he disclosed the name of accused Kedar Nath Singh only when he was asked in cross-examination by the defence. The submission is that the prosecution should have re-examined him and he could have been declared hostile but it was not done. Similarly PW 4 and PW 5 deviated from their statements made under Sections 161 and 164 Cr.P.C. but they were neither declared hostile nor re-examined by the learned Public Prosecutor. A similar view has been expressed by learned counsel for the petitioners with respect to Kanahiya Kumar (PW 6) and Dr. Anishur Rahman (PW 7). In this regard this Court has recorded the submissions of learned counsel for the petitioners in the earlier part of this order.

50. The question which has fallen for consideration before this Court is as to whether in the facts of the present case, even if the submissions of learned counsel for the petitioners are taken as it is, what would be culled out from his submissions? Is it that learned counsel for the petitioners has been complaining about the conduct of the prosecution by the learned public prosecutor in a shoddy manner



or his contentions may lead to a view that the learned trial court was acting with bias and/or was not maintaining impartiality while conducting the trial.

No Allegation of Bias against the Trial Court

51. This Court can safely record that it is nowhere the case of the petitioners that the learned trial court was acting with bias or partiality. A complete reading of the pleadings on the record would show that the whole grievance of the petitioners centers around the conduct of the trial in a lackadaisical manner by the Additional Public Prosecutor. The grievance is that some of the witnesses who were not supporting the prosecution case should have been declared hostile/re-examined which was not done.

52. At this stage, this Court would refer the two petitions dated 06.08.2022 filed in the learned trial court on behalf of the informant. The informant alleged in one of the petitions that the intention of learned APP who is conducting the trial is not good and he is deliberately not attracting the attention of the prosecution witnesses towards their earlier statements. It is evident from this application that the informant requested the learned trial court to keep the trial pending until appointment of another learned APP in the case. In the petition dated 06.08.2022 there is no whisper of allegation against the learned trial court. On the said date, in another petition, the informant submitted before the learned trial court that



the signature of Kanahiya Kumar has already been proved by PW 3 and it has been marked Ext. 9 and Ext. 10 respectively on the two seizure list. There is no statement of this witness under Section 161 CrPC, hence, his evidence be recorded only in respect of the seizure list. On the said date, Kanahiya Kumar (PW 6) was examined, cross-examined and discharged. It further appears that on 20.08.2023, the informant filed an application requesting to take legal action against Sanjay Kumar (PW 5) for giving fabricated and false evidence but the learned Public Prosecutor refused to accept the same. In this petition also, there is no allegation at all against the learned trial court.

53. It further appears on perusal of the ordersheet copies of which have been provided to this Court that the prosecution filed a petition for calling of the seized materials kept at Police Station Masrakh for the purpose of exhibiting the same. The learned trial court allowed the said application and directed to issue letter to the concerned SHO for producing the seized materials in the case. On 21.12.2022, the informant filed an application requesting the learned trial court to direct the learned Judicial Magistrate 1st Class who had recorded the statements of Sanjay Kumar, the informant and Maheshwar Singh under Section 164 Cr.P.C. to appear with those statements and prove them as evidence. Learned trial court accepted this application of the



informant and directed issuance of summons for appearance of learned Judicial Magistrate Shri Anchal Dwiwedi.

54. There is one important fact which would be appearing from the records. On 18.11.2022, the prosecution submitted that all the chargesheet witnesses have been examined but the names of some witnesses whose statements have been recorded by the Investigating Officer in the case diary who all were present at the time of incident should be allowed to be examined in this trial. This petition was seriously objected to on behalf of the informant. Learned trial court passed a reasoned order on 06.01.2023 wherein considering the objections of the informant as well as materials on the record, the petition dated 18.11.2022 was rejected and the case was fixed for further proceeding. From the kind of order passed by the learned trial court on 06.01.2023, it is evident that the learned trial court was considering the objection of the informant and has passed the order accepting the objection of the informant.

55. There is yet another material before this Court. It appears that on 28.02.2023, the learned APP filed an application under Section 311 Cr.P.C. for recalling of witness Kapoor Nath Sharma for purpose of proving the 'material exhibits' which were seized and required to be proved by PW-3. By that time PW-3 had



already been transferred and calling him from his transferred place would have taken much time resulting in delay in conduct of trial. The informant opposed this application of the learned Additional Public Prosecutor. It was his submission that any competent police officer from the Masarakh Police Station is authorized to get examined as witness of objects to get them marked exhibits, therefore, there was no need to recall PW-3. The informant contended that the seized materials object may be proved through a competent police officer from the concerned police station and may be summoned for the progress of the case. The learned trial court considered the objection of the informant and in its order dated 06.04.2023, agreed with the informant that the seized materials placed in Masarakh Malkhana of concerned police station may be produced by any competent police officer before this Court and he may get the same exhibited in the capacity of a formal witness of the prosecution. The order dated 06.04.2023 passed by learned trial court would show that the contention of the informant was accepted by the learned trial court.

56. In the aforementioned background when this Court examines this case in the light of the judgment of the Hon'ble Supreme Court in the case of **K. Anbazhagan**, it is noticed that in the said case the accused-second respondent was the Chief



Minister of Tamil Nadu. The AIDMK party headed by the second respondent had been defeated in the general elections held in 1997 DMK voted to power, Special Courts were constituted for the trial of the cases filed against the second respondents and others. In course of trial as many as 76 prosecution witnesses were recalled for cross-examination on the ground that counsel appearing for the respondents or some of them had earlier been busy in some other case filed against them. It was alleged that the Public Prosecutor did not object and/or give consent to the witnesses being recalled. Out of total 76 PWs, 64 PWs resiled from their previous statement-in-chief and he Public Prosecutor had not made any attempt to declare them hostile and/or to cross-examine them by resorting to Section 154 of the Indian Evidence Act. No attempt had been made to see that court takes action against them for perjury. It was alleged that the presence of the second respondent had been dispensed with during her examination under Section 313 CrPC and instead a questionnaire was sent to the second respondent and her reply to the questionnaire was sent to the court in absentia. It was alleged that the procedure so adopted is unknown to law and the Public Prosecutor had not objected to the application of Respondent 2 for dispensing with her presence.



57. In the aforementioned background of the facts the Hon'ble Supreme Court reviewed the case laws on the subject. Paragraphs '15', '16' and '17' of the judgment in the said case are being reproduced hereunder for a ready reference:-

“**15.** At this stage, we may notice a few decisions of this Court with regard to the scope of Section 406 CrPC. In *Gurcharan Dass Chadha v. State of Rajasthan*⁵, at SCR p. 686 this Court observed as under: (AIR p. 1423, para 13)

“A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The court has further to see whether the apprehension is reasonable or not. To judge the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the court to be a reasonable apprehension.”

16. In *Maneka Sanjay Gandhi v. Rani Jethmalani*⁶ this is what this Court has said in para 2: (SCC p. 169)

5.[AIR 1966 SC 1418 : (1966) 2 SCR 678 : 1966 Cri LJ 1071]

6. [(1979) 4 SCC 167 : 1979 SCC (Cri) 934]



“2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.”

17. In *Abdul Nazar Madani v. State of T.N.*⁷ this Court pointed out in para 7 at SCC pp. 210-11 as under:

“7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard-and-fast rules can be prescribed for deciding a

7. [(2000) 6 SCC 204 : 2000 SCC (Cri) 1048]



transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.”

58. The Hon’ble Supreme Court noticed in the said case that the petitioner had made out a case that the public confidence in the fairness of trial is being seriously undermined. The witnesses who had been examined and cross-examined earlier should on such a flimsy ground never have been recalled for cross-examination. The Hon’ble Supreme Court observed that the fact that it is done after the second respondent assumed power as the Chief Minister of the State and the Public Prosecutor appointed by her Government did not oppose and/or give consent to the application for recall of witnesses is indicative of how judicial process is being subverted. The Hon’ble Supreme Court observed that no attempt had been made to elicit or find out whether witnesses were resiling because they are now under pressure to do so. To the Hon’ble Supreme Court it appeared that the new Public Prosecutor had hand in glove with the accused thereby creating a reasonable apprehension of likelihood of failure of justice in the



minds of the public at large and there were strong indication that the process of justice was being subverted. In paragraph '31' the Hon'ble Supreme Court observed as under:-

“31. Mr Venugopal, learned Senior Counsel for the respondent contended that merely because the witnesses were not declared hostile, would not exclude or render unworthy of consideration the facts rendered by them in their evidence-in-chief. He submitted that the court can consider any part of their testimony and can still believe and rely upon that part of testimony which was given in the evidence-in-chief if that part of the deposition is found to be creditworthy. According to Mr Venugopal, by not declaring the PWs as hostile witnesses no prejudice has been caused to the prosecution case. To buttress his contention reliance has been placed on *Gura Singh v. State of Rajasthan*⁸, *State of Bihar v. Laloo Prasad*⁹ and *Pandappa Hanumappa Hanamar v. State of Karnataka*¹⁰. This Court in *Laloo Prasad case*⁹ observed that it is open to the party who called the witness to seek the permission of the court as envisaged in Section 154 of the Evidence Act at any stage of the examination and it is a discretion vested with the court whether to grant the permission or not. It is further observed that normally when the Public Prosecutor requested for the permission to put cross-questions to a witness called by him the court used to grant it. It was further pointed out that if the Public Prosecutor had sought permission at the end of the chief examination itself the trial court would have no good reason for declining the permission sought for. On a combined reading of the aforesaid decisions of this Court, it emerges clearly that even in a criminal prosecution when a witness

8. (2001) 2 SCC 205 : 2001 SCC (Cri) 323

9. (2002) 9 SCC 626

10. (1997) 10 SCC 197 : 1997 SCC (Cri) 811



is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. The decisions by this Court in the above-referred cases are rendered in cases where the Public Prosecutor sought permission to question his own witnesses by resorting to Section 154 of the Evidence Act and the court allowed the Public Prosecutor to cross-examine his own witnesses. In such cases the trial Judge has discretionary power to examine the entire testimony and accept that part of testimony which he finds to be creditworthy and act upon it. But in the present case, the Public Prosecutor has not sought permission from the Court by resorting to Section 154 of the Evidence Act even though the witnesses have resiled from their earlier testimony. In such a situation the subsequent testimony of the witnesses remains uncontroverted. Just to take an example, when the witness now states that his earlier evidence was given under pressure and no attempt is made to cross-examine such a witness, the court may find it difficult if not impossible to accept the earlier statement. The trial Judge may find it difficult not to accept the subsequent testimony of the witness, which has remained uncontroverted. This causes great prejudice to the prosecution culminating in great miscarriage of justice.”



59. After going through the judgment of the Hon'ble Supreme Court in the case of **K. Anbazhagan**, it appears to this Court that in the said case after formation of a government by the second respondent a new public prosecutor had been appointed and thereafter, 76 prosecution witnesses were allowed to be recalled. The learned trial court had passed the order allowing recall of 76 prosecution witnesses with the consent of the learned public prosecutor in the said case. Those witnesses resiled from their earlier statements. In the present case one of the opposite parties is lying in jail, the O. P. No.9 who is the sitting M.L.A. is from a party which is not now in power in the State and the Special Public Prosecutor is being appointed from the High Court as suggested by the learned Advocate General, therefore, the facts situation of the present case are quite different and distinct. It is noticed that no fault may be found with the orders passed by the learned trial court. It is found that the learned trial court has not allowed the application dated 18.11.2022 filed by the Additional Public Prosecutor for examination of six non-chargesheeted witnesses by accepting the objection of the informant. The relevant part of the order dated 06.01.2023 passed by learned trial court reads as under:-

“..... It is to be also noted that no cogent reason or ground has been cited by the prosecution for



calling of these new set of witnesses apart from all the twelve (12) witnesses of the charge-sheet who have been examined or how these witnesses will produce additional evidence or substantiate the case of prosecution against the accused persons. It is to be also on record that this Sessions trial is also belong to the category of trials of Criminal Cases going against M.P./M.L.A. These cases are monitored by the Hon'ble Supreme Court through **Ashwini Kumar Upadhyay and ors. Versus Union of India and Ors.** and Hon'ble Patna High Court with direction for expeditious trial and disposal. It seems that the petition dated 18.11.2022 will only delay the trial and disposal of this case.

Considering the Mandate of law, serious objection of the informant with citations on record as well as material available on record, the petition dated 18.11.2022 is found devoid of any cogent reasons or ground to be allowed. Therefore, the petition dated 18.11.2022 filed on behalf of the prosecution is liable to be rejected. Hence, it is rejected. Put up on 11.01.2023 for further proceeding.”

60. It is reiterated that it is no where the case of the petitioners that the learned trial court had been acting with partiality. In the case of **K. Anbazhagan**, the trial was being conducted against the second respondent who was the Chief



Minister of the State and a new public prosecutor had been appointed by the second respondent who was found getting influenced by the second respondent. In the present case the learned Advocate General has already suggested the name of Sri Ajay Kumar Mishra, Additional Public Prosecutor practicing in this High Court to conduct the trial and the appointment of a new Public Prosecutor has not been contested by the accused persons. In such circumstances, this Court is of the considered opinion that at this stage, the petitioners cannot have reasonable apprehension that justice will not be done to them. In order to ensure fair trial, this Court has already directed the State Government to notify the appointment of learned Special Public Prosecutor as suggested by learned Advocate General. The State Government has been directed to provide all logistic support to the Special Public Prosecutor. The petitioners have already engaged their own lawyer to assist the prosecution.

61. In the result, at this stage, this Court finds no plausible reason to direct transfer of the trial from the criminal court i.e. M.P./M.L.A. Court, Saran, Chapra to a criminal court i.e. M.P./M.L.A. Court at Patna.

62. It will, however, be open to the petitioners to move this Court afresh if at any stage, they get a reasonable



apprehension that the miscarriage of justice is likely to be done and the petitioners are not likely to get justice.

63. This criminal miscellaneous application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

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CAV DATE	29.01.2024
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