

**(2006) 05 JH CK 0010**

**Jharkhand High Court**

**Case No:** Criminal M.P. No"s. 432 and 441 of 2006

Munna Singh @ Sharangdha  
Singh and Bachha Singh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

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**Date of Decision:** May 3, 2006

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 232, 233, 313, 482

**Hon'ble Judges:** Dilip kumar sinha, J

**Bench:** Single Bench

**Advocate:** B.V. Kumar and Sanjay Kumar Pandey, in Cr.M.P. No. 432 of 2006, Manish Kumar, in Cr.M.P. No. 441 of 2006 and Shailesh, for the Appellant; S.N. Rajgarhia, Cr.M.P. No. 432 of 2006 and Alok Lal in Cr.M.P. No. 441 of 2006, for the Respondent

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**Judgement**

D.K. Sinha, J.

Cr.M.P. No. 432 of 2006 and Cr.M.P. No. 441 of 2006 are taken together for common order arising out of common cause of action whereby and whereunder prayer has been made u/s 482 of the Code of Criminal Procedure for quashing the order impugned dated 18.3.2006 passed by the Additional Sessions Judge, FTC IV, Dhanbad in Sessions Trial No. 301 of 2002 arising out of Katras (East Basuria ) P.S.Case No. 30 of 1999 whereby and whereunder the trial court below rejected different petitions of the petitioners herein.

2. Following petitions were disposed of by the trial court below on 18.3.2006 impugned in the Sessions Trial No. 301 of 2002:

(i) Petition filed by one of the accused Munna Singh for issuance of summons to the witnesses (Cr.M.P. No. 432 of 2006)

(ii) Petition filed by Bachha Singh to summons Sri Binod Kumar Singh, Investigating Officer of this case as defence witness (Cr. M.P. No. 441 of 2006).

(iii) Petition for hearing and passing final judgment in this case as well as the case of Ramadhir Singh @ Ramadhin Singh to avoid any inconsistency in decision.

Item No. (iii) is not relevant in the present case.

3. With reference to Item No. (i) which relates to Cr.M.P. No. 432 of 2006, prayer was made by the accused petitioner Munna Singh to issue summons to the witnesses through the Superintendent of Police in relation to the official witnesses and separate summons to non-official witnesses through the process of the court. It is evident from the order impugned and to quote " in the present case accused Munna Singh had furnished a list of witnesses in which witness No. 1 to 8 are Officers-in-Charge of the concerned police stations. The defence has levelled his petition that aforesaid Officers-in-Charge were present at the said police station in the year 1999. Their prayer is to issue summons through the Superintendent of Police. Petition is completely silent regarding the present posting of the aforesaid official witnesses. The accused Munna Singh has also mentioned the name of some non-official witnesses along with their address and prayed to issue summons through the agency of the court. From perusal of the petition I find force in the argument of the Public Prosecutor that such petition has been tiled by the defence only to cause delay in disposal of the case. If prayer of the accused be allowed, , certainly it will put a hindrance in early disposal of the case.

As I have already stated in the present case tort the direction of the Hon"ble apex Court to dispose of the case expeditiously, hence, in the aforesaid circumstances, the prayer of issuance of summons through court agency cannot be allowed. However, defence is hereby permitted to take Dasti summons against the aforesaid witnesses from the court. With the aforesaid observation the petition of the accused Munna Singh is hereby rejected".

4. The Code of Criminal Procedure has envisaged the provision of the defence evidence. Section 233 of the Code speaks as under:

1. Whenever the accused is not acquitted u/s 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

2. If the accused puts in any written statement, the Judge shall file it with the record.

3. If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

5. Explaining the exigency learned Counsel submitted that petitioner Munna Singh @ Sharangdha Singh denied all the charges as framed against him and he has stated u/s 313 of the Code of Criminal procedure in the defence of his case that he was arrested on 29.1.1999 at 4.30 p.m. from Varanasi by one P.K. Das, Sub-Inspector

of Police, who was posted at the relevant time at Govindpur (Dhanbad) police station. For such arrestation entry was made, vide No. 67 in the station diary in Ramnagar Police Station at Varanasi and, therefore, the statement of P.K.Das is necessary. A news item was also published in the daily newspaper about his arrest on 31.1.1999 from Varanasi and, therefore, he wanted to show his alibi on the strength of Xerox copy of the certified copy of the entry made in the station diary at Ramnagar Police Station on 29.1.1999 (Annexure 3). A list of 15 witnesses was presented for their production as defence witnesses to prove his innocence and further he had prayed for the production of the station diary of Ramnagar Police Station through the Officer-in-Charge. Learned Counsel mentioned that witnesses No. 9 to 15 were non-official but petition was rejected vide order impugned dated 18.3.2006 causing serious prejudice to the defence of the petitioner. In this manner, he has been deprived of his right to enable fair opportunity to prove his innocence. The learned Counsel further submitted that the right of the petitioner has been frustrated on the plea of the court below that there was direction of the Hon"ble Supreme Court of India to try the case expeditiously which has not been taken by the trial court in right perspective and, therefore, the order impugned is illegal, arbitrary and passed without considering the object and scope of Section 233 of the Code of Criminal Procedure. There is no mala fide intention on the part of petitioner to delay the trial or to defeat the ends of justice.

6. On the other hand, with reference to Cr.M.P No. 441 of 2006 prayer has been made to recall P.W. 12 (Investigating Officer) to draw his attention towards the development made by the P.W. 13, Manoj Kumar Singh in his substantive evidence, examined later to the Investigating Officer in the court on 6.7.2004 as against what he had stated before the police u/s 161 of the Code of Criminal Procedure. The relief which has been sought for by the petitioner in the petition at hand has been granted by this court in a separate petition directing the trial court to recall Investigating Officer, P.W.12 for drawing his attention by the defence but with certain conditions and, therefore, Cr.M.P. No. 441 of 2006 has become infructuous. No fresh order is required to be passed in this case.

7. So far as Cr.M.P. No. 432 of 2006 is concerned, the order impugned dated 18.3.2006 is set aside with the direction to the trial court below in Sessions Trial No. 301 of 2002 arising out of Katras (East Basuria) P.S. Case No. 30 of 1999 to critically examine the list of 15 witnesses placed before him by the petitioner, Munna Singh @ Sharangdha Singh, keeping in view of the exigency shown by the petitioner in relation to each witnesses, in his own wisdom and after preparing a fresh list after such scrutiny, issue summons to the short listed witnesses by giving 15 days time to the defence for their appearance and thereafter evidence shall be recorded on day to day basis so as to conclude the trial as soon as possible in compliance to the direction of the apex Court. By allowing this petition in part, in the manner indicated hereinabove, it is disposed of.