

**(2008) 08 JH CK 0041****Jharkhand High Court****Case No:** None

Munna Singh @ Sharangdhar  
Singh

**APPELLANT****Vs**

The State of Jharkhand

**RESPONDENT****Date of Decision:** Aug. 14, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 233, 313
- Penal Code, 1860 (IPC) - Section 120B, 302, 307, 34

**Citation:** (2008) 4 JCR 434**Hon'ble Judges:** Amareshwar Sahay, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Amareshwar Sahay, J.

Heard the parties.

2. The petitioner is challenging the order dated 15.01.2008 passed in S.T. No. 301/02 by Additional Sessions Judge, F.T.C. - IV, Dhanbad closing the case of the defence and fixing the Sessions Trial for arguments.

3. The facts in short are that the petitioner alongwith other accused persons is facing trial in S.T. No. 301/02 for the charges under Sections 302, 307, 120-B/34 of the Indian Penal Code. It appears that on 23.11.2005, the evidence of the prosecution witnesses was closed and then the statement of the accused persons were recorded on 15.12.2005. Thereafter, the case was fixed for 20<sup>th</sup> December, 2005 for defence witnesses.

4. As it appears that at the stage of producing defence witnesses, the petitioner filed a petition alongwith a list of 15 witnesses before the Trial Court for summoning them. The list included the eight Officers Incharge of the Police Station.

5. The learned Trial Court though rejected the said prayer of the defence by order dated 18.03.2006 but the petitioner was permitted to take Dasti summons from the Court against his witnesses. The said order of the Trial Court was challenged before this Court in Cr.M.P. No. 432 of 2006. A Single Bench of this Court, by order dated 18.05.2006, set aside the order of the Trial Court and directed it to critically examine the list of 15 witnesses presented before him on behalf of the petitioner Munna Singh @ Sharangdha Singh keeping in view the exigency shown by the petitioner in relation to each witness on 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, the evidence shall be recorded on day-to-day basis so as to conclude the trial as soon as possible in compliance of the direction of the Apex Court.

6. At this juncture, it is relevant to note that there is already a direction of the Apex Court in its order dated 28.10.2005 to expedite the trial. This order was passed while dismissing the SLP filed by the accused persons.

7. Pursuant to the direction of this Court in Cr.M.P. No. 432 of 2006, the Trial Court short listed 11 witnesses and ordered to issue summons to the defence witness Nos. 1 to 8 through the Superintendent of Police, Dhanbad and summons were also issued to the witness Nos. 9 to 11 through Court. Pursuant thereto four witnesses appeared and they were examined.

8. Thereafter, the petitioner again filed a petition in the Trial Court to examine to take coercive steps against the remaining defence witnesses who did not appear in exercise of the power u/s 233 Cr.P.C. The prosecution seriously objected to such prayer of the defence and submitted that it was nothing but a delaying tactics of the defence to stall the trial on one pretext or the other. The Trial Court, considering the facts and submissions made by the parties, rejected the prayer of the defence by order dated 20.07.2007. The petitioner, thereafter, again came to this Court in Cr.M.P. No. 1027 of 2007 for quashing of the order dated 20.07.2007 passed by the Trial Court refusing the prayer of the petitioner to examine all the remaining defence witnesses.

9. This Court, by order dated 01.08.2007, while disposing the Cr.M.P. No. 1027 of 2007, gave one more indulgence to the petitioner by giving him liberty that if he applies for issuance of Dasti Summons to its defence witnesses within a period of ten days, the Trial Court shall issue Dasti Summons, giving specific date/dates for examination of the defence witnesses and if the petitioner, thereafter, fails to examine his defence witnesses, the Trial Court will be at liberty to close the evidence of the defence witnesses.

10. Pursuant to the order of this Court in Cr.M.P. No. 1027 of 2007, Dasti Summons were issued by the Trial Court fixing the date on 30<sup>th</sup> August, 2007 and then on 19.09.2007. But, as it appears from the impugned order that not a single witness

appeared on behalf of the defence.

11. Mr. Anil Kumar Sinha, learned Senior counsel appearing for the petitioner submitted that if after service of summons, the defence witnesses were not appearing to depose, then it was incumbent upon the Trial Court to issue processes compelling them to appear and depose but the Trial Court wrongly rejected the petition and closed the case of defence and fixed the case for arguments.

12. From the records, it appears that the prosecution was closed as far back on 23.11.2005 and accused were examined u/s 313 Cr.P.C. on 15.12.2005. The Trial is being lingered for the defence witnesses for 20.12.2005. Though, on earlier two occasions, the defence evidences was closed by the Trial Court, this Court gave sufficient opportunity to the petitioner to produce his witnesses. When the petitioner is not being able to produce his further defence, then in my view, if the trial is allowed to be lingered in the manner then it be certainly be against the spirit of the order of the Supreme Court which had directed to expedite the trial and also against the orders passed by this Court on 01.08.2007 in Cr.M.P. No. 1027/2007 as well as orders dated 18.05.2006 in Cr.M.P. No. 432 of 2006 which has already been noticed above.

13. The petitioner has been given more than sufficient opportunity to produce his witnesses in terms of Sections 233 Cr.P.C. and he cannot be allowed to delay the disposal of the trial by raising one and the same point again and again.

14. Having considered the facts and circumstances of the case, I do not find any merit in this application. Accordingly, this application is dismissed. The trial Court is directed to proceed with the trial without any further delay.