

In the Court of Sri. Sanjay Kumar Singh (Addl.S.J., Manjhaul)
(Begusarai)

S.T No-187/1999

Khodawandpur P.S Case No-51/1996

Gopal Singh and Another Vs. State of Bihar

- 12.12.2024 1. A attendance has been filed on behalf of accused Sunil Singh and a representation petition has been filed on behalf of accused Gopal Singh which is allowed for today only.
2. Heard Ld. Counsel for the accused as well as the Ld. A.P.P. on the petition dated 24.04.2024 filed on behalf of the accused Sunil Singh.
3. It has been submitted by the ld. Counsel for the petitioner that on the basis of petition of this petitioner the carbon copy of case diary has come before the court and now the applicant wants to mark exhibit the case diary as three I.O. have investigated this case but none of them have examined in this case. The last I.O. had submitted the final form against the petitioner and declared him as innocent but he has not come before the court for examination. All the witnesses gave highly contradictory statement on vital point, which will come from the perusal of case diary. In this case informant is S.I. of Khodawandpur P.S. who has also not been examined in this case. Hence, the defence has highly prejudiced due to non-examination of informant and I.O. of the case. The ld. counsel further submitted that no doubt the case diary has no important and cannot use in evidence but in this concern, section-172(2) Cr.P.C says that the court can peruse the case diary during inquiry and trial. Our own high court clearly says, in a case of 'Raja Kebat vs. State of Bihar' reported in 1988 Eastern India Cr. Cases page 270 the Lordships says, "none examination of the I.O. result in causing serious lacuna in prosecution evidence and also to accused. There is no adequate explanation for non-production of these witnesses in court, even case diary has not been proved on the record and in the circumstance it has rightly urged that serious prejudice has been caused the appellant." The ld. counsel further prayed to mark exhibit the case diary.
4. The Ld. A.P.P. opposed the submission of the Ld. Counsel for the accused and submitted that petition is not maintainable in eye of law as well as in facts. The case diary can't mark exhibit in evidence as per law.

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5. Having heard the ld. counsels for the respective parties and from the perusal of the record, it transpires that the accused petitioner stated in para-4 of his petition himself that “no doubt the case diary has not important and cannot used in evidence” and the citation mentioned by the defence has not stated about marking of case diary as exhibit in evidence whereas by his petition the defence prays to mark exhibit the photocopy of carbon copy of case diary in evidence. Section-172(2) of Cr.P.C. mandates that “any criminal court may send for the police diaries of a case under inquiry or trial in such court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.” Whereby it is clear that the case diary can be used by the court as an aid to appreciate the legal evidence, the court can peruse the case diary in inquiry or trial.. However, the Apex Court in the *State of Bihar and another versus P.P. Salma IAS and another 1992 Supp 1 SCC 222* it was observed that “the entries in the case diary are not evidence, nor can they be used by the accused or the court, unless the case comes within the scope of section-172(3) of Cr.PC.” Thus, as per the mandates of law the court may peruse the case diary of this case as an aid and for appreciating the legal evidence available on the record but not beyond. Hence, in the light of above discussion the petition dt. 24.04.2024 filed on behalf of accused is hereby disposed of. Put up on 16.12.2024 for defence evidence.

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