

**State Vs. Mithilesh Kumar Singh**

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**SooperKanoon Citation :** [sooperkanoon.com/520782](http://sooperkanoon.com/520782)

**Court :** Jharkhand

**Decided On :** Jul-19-2004

**Reported in :** 2004CriLJ4388

**Judge :** M.Y. Eqbal, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1974 - Sections 231

**Appeal No. :** Cri. M.P. No. 375 of 2003

**Appellant :** State

**Respondent :** Mithilesh Kumar Singh

**Advocate for Def. :** Aparesh Kr. Singh, Adv.

**Advocate for Pet/Ap. :** Rajesh Kr. and D.K. Bharti

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**M.Y. Eqbal, J.**

1. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 20-12-2002 passed by Special Judge Central Bureau of investigation cum-4th Additional District Judge, Dhanbad

in R. C. No. 1(A)/89(D) whereby he has closed prosecution evidence and the case was fixed for examining the accused and for recording his statement under Section 313, Cr. P. C.

2. It appears that a criminal case was instituted against the opposite party on the allegation inter alia that he has acquired huge assets both movable and immovable while working at different capacity in BCCL and he could not satisfactorily account for his illegal source of income. On the basis of F.I.R. a case was registered under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act. It is contended that some of the witnesses have been examined by the prosecution and some more witnesses have to be examined but the Court below closed the evidence in the light of the order dated 14-6-2002.

3. Learned counsel appearing for the petitioner assailed the impugned order on the ground inter alia that despite best effort trial could not be concluded within time fixed by the Court and in that view of the matter the Court below ought to have exercised discretion in allowing time to the prosecution to examine other witnesses. Learned counsel submitted that the Court below has not considered the decision relied upon by the prosecution in the case of P. R. Rao v. State of Karnataka, (2002) 4 SCC 578 : (AIR 2002 SC 1856) : (2002 Cri LJ 2547).

4. After hearing learned counsels for the parties the undisputed facts emerge are that the Court below fixed 26-5-98 as the first date for recording evidence. On that date and on subsequent dates no prosecution witnesses were examined in spite of all the steps taken by the Court. Only five prosecution witnesses were examined in between 26-5-98 and 5-4-2000. On 5-4-2000 a petition was filed from the side of the accused for closure of the prosecution case. However, the Court below allowed one year's time to the prosecution for examining remaining witnesses. Again on 28-5-2001 the Court below granted two months more time to the prosecution for examining witnesses. When the prosecution failed to examine witnesses, the Court below ultimately closed the evidence by order dated 17-1-2002. Petitioner then challenged the said order before this Court in Cr. M. P. No. 297 of 2002. This Court after hearing the parties disposed of the aforesaid case by order dated 14-6-2002. The operative portion of the order reads as under :

Thus, while allowing this petition the prosecution/petitioner is directed to produce the rest of the witnesses and examined them within a period of six months positively and the Special Judge shall examine those witnesses on the day to day basis so that the case may be concluded the time frame. However, if the Court below find any laches on the part of the prosecution in delaying the disposal of the case or deliberate intention on the part of the prosecution in not producing the witnesses, the Special Judge will be at liberty to close the case and dispose of the matter after hearing both sides, in accordance with law.'

5. In spite of the aforesaid order the prosecution failed to examine witnesses. Not only that prosecution was granted three months' more time for examining all the witnesses but even then prosecution failed to examine the witnesses. It was only thereafter the opposite party filed application for closure of the evidence. The Court below after holding that the prosecution not only failed to examine the witnesses within the time framed by this Court but also within the further time of six months given to the prosecution to conclude the evidence, failed to do so. The Court below therefore having no option but to close the evidence of the prosecution.

6. Taking into consideration all these undisputed facts, I am of the opinion that no illegality has been committed by the Court below in closing the evidence of the prosecution. The decision relied upon by the prosecution does not apply in the facts of the present case. The prosecution is not entitled to linger the case for indefinite period in the matter of examination of prosecution witnesses and the Court is not bound to exercise discretion all the time in favour of the prosecution in extending time for examination of the witnesses. The impugned order in my considered opinion is fully justified and there is no illegality in exercising jurisdiction by the Court below in closing prosecution witnesses.

7. For the aforesaid reasons, the impugned order needs no interference by this Court. The instant petition is, accordingly, dismissed.