

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19917 of 2015

Arising Out of PS.Case No. -42 Year- 2010 Thana -CHHATAPUR District- SUPAUL

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1. Jay Kumar Singh son of Upendra Yadav, Resident of village-
Bhabanipatti, P.S.- Chhatapur, District- Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun ANSUL, Adv.

For the Opposite Party/s : Mr. Nirmal Kr.Sinha(App)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH
ORAL ORDER

2 11-05-2015

Heard learned counsel for the petitioner and

learned counsel for the State.

1. This application under section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 04.12.2014 passed in Sessions Trial No. 333 of 2010 by the learned Additional District and Sessions Judge-II Supaul whereby he has rejected the application filed on behalf of the petitioner for recalling P.W.1 Rekha Devi for further cross-examination.

2. The prosecution case is based on the written report of P.W.1 Rekha Devi wherein she has alleged that on 01.04.2010 at about 7 P.M, the petitioner, who is her husband has killed their male child aged about 10 months. The case was registered for the offences punishable under sections 302, 328,



201/34 of the Indian Penal Code. On completion of investigation the police submitted charge sheet under sections 302, 328, 201/34 I.P.C, and after framing of charges altogether ten witnesses were examined on different dates. P.W.1 Rekha Devi was examined and cross-examined in part on 17th May 2011. She was further cross-examined on 16.02.2011 and 27.07.2011 by the defence. After her discharge, nine more prosecution witnesses were examined on different dates and the last witness P.W.10, namely, Shrikant Pd. Sinha was examined on 10.06.2014. The prosecution case was closed on 05.07.2014.

3. After examination of ten witnesses on behalf of the prosecution the petitioner has filed an application on 23.07.2014 under section 311 Cr.P.C. for recalling P.W.1 Rekha Devi for further cross-examination. The aforementioned application has been rejected by the trial court vide order dated 04.12.2014. The aforesaid order dated 04.12.2014 is under challenge in the present application.

4. At the time of argument no cogent-reason could be brought to the notice of the court on the basis of which it can be held that further cross-examination of P.W.1, Rekha Devi, was necessary for just decision of the case. It is well settled that the power under section 311 of the Code of Criminal Procedure

is discretionary in nature. It confers jurisdiction upon the court to summon material witness or examine person at any stage of trial or further proceeding or recall or re-examine any person already examined if its evidence appears to be necessary for just decision of the case.

5. In the present case, it would appear that P.W.1 was extensively cross-examined on three different dates. There is nothing on record on the basis of which it can be said that her further cross-examination was necessary. The application filed by the petitioner before the court below seems to be an effort to delay the completion of trial of the case.

6. In that view of the matter, in my opinion the court below has rightly rejected the application vide impugned order dated 04.12.2014. The application, being devoid of merit, is dismissed.

(Ashwani Kumar Singh, J)

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