

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30063 of 2012

Arising Out of PS.Case No. -28 Year- 2004 Thana -null District- GAYA

Md. Shamim S/O Late Rahat Mian Resident Of Village- Rewara, P.S.- Belaganj,
District- Gaya

.... Petitioner

Versus

1. The State Of Bihar
2. Mariyana Khatoon W/O Subhan Ansari, Resident of Village- Rewara, P.S.
Belaganj, District- Gaya.

.... Opposite Parties.

Appearance :

For the Petitioner : Mr. Mrigendra Pratap singh &
Mr. Shrawan Kumar Singh, Advocates.
For the Opposite Parties : Mr. P.K. Chaurasiya, A.P.P.

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 20-02-2015

In spite of notice O.P. No. 2 has not appeared.

Heard learned counsel for the petitioner as well as the learned
A.P.P. for the State.

The instant petition has been filed for quashing the order dated
24.04.2008 passed in Sessions Trial No. 255 of 2004 by the F.T.C.-III, Gaya,
whereby and whereunder, the recall petition filed by the petitioner to recall P.W.
4 Sabeena Khatoon for further cross examination has been rejected.

Submission is that the petitioner is ready to bear the cost and if that
witness is not permitted to be cross-examined then serious prejudice will be
caused to the defence and it will be abuse of the process of law and as such prayer
has been made to permit for further cross-examination of P.W. 4 Sabeena
Khatoon. It is submitted that the senior lawyer Sri Ashok Kumar has gone to
Indour for his personal work and as such that witness was not cross-examined. If

petitioner is not allowed to cross-examine that witness great prejudice would be caused to him.

The learned A.P.P. submits that the impugned order requires no interference and the petitioner was given sufficient opportunity to cross examine P.W.4 Sabeena Khatoon. The witness resides at Delhi and she has come from Delhi but in spite of two dates given the petitioner did not cross examine her.

Having considered the submission urged at the bar, going through the records and the impugned order and noticing that on the ground of non availability of Senior Counsel the Junior Counsel prayed for time for further cross examination of P.W. 4 Sabeena Khatoon and as such she being the important witness her cross-examination is required to meet the ends of justice, but as she resides at Delhi and as such on payment of cost of Rs. 3,000/- which will be payable to Sabeena Khatoon, P.W.4, the petitioner is permitted to cross-examine her and accordingly the petition filed on behalf of the accused persons for recalling P.W.4 Sabeena Khatoon for further cross examination is hereby allowed and the impugned order dated 24.04.2008 is hereby set aside. The witness is recalled for further cross-examination.

Let the Trial Judge will issue summons accordingly to the witness.

In the result, this Criminal Miscellaneous Application is hereby allowed with the aforesaid cost.

(Jitendra Mohan Sharma, J)

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