

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7657 of 2013

Arising Out of PS.Case No. -56 Year- 2003 Thana -PAROO District- -

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Jai Prakash Chaurasia, son of late Nakul Prasad Chaurasia, resident of village-Deoria, Bania Tola, P.S.-Deoria, District-Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Mazid Khan, son of Md.Afzal Khan, resident of Mehandiganj
3. Tafzul Khan, son of Md.Afzal Khan, resident of Mehandiganj (deleted vide order dated 25.10.2013)
4. Gopal Das, son of Durga Das, resident of village-Chandpura Math
5. Mainuddin Ansari, son of Asin Ansari, resident of Balia (West) Tola All P.O.+P.S.-Deoria, District-Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Upendra Kumar Chaubey
Mr.Suraj Narain Yadav

For the Opposite Party no.1 : Mr. Jharkhandi Upadhyay, APP

For the Opposite Party Nos.2to5: None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

6 25-06-2015 Heard learned counsel for the petitioner and learned Addl.P.P. appearing on behalf of the State.

Though, the accused opposite parties have entered appearance through their learned counsel and the name of learned counsel is printed in the daily cause list, but none appears on their behalf when the matter has been taken up for consideration on merits.

The petitioner, who is the informant of the criminal case, has filed the present application under Section 482 Cr.P.C. for quashing the order dated 20.12.2012 passed in Session Trial No.275/03 arising out of Paroo (Deoria) P.S. Case No.56 of 2003 by the learned Adhoc Additional Sessions Judge-Vth, Muzaffarpur, whereby the petition filed under Section 311 Cr.P.C. for examination of the informant and victim has been dismissed

for want of prosecution and not on merit.

Learned counsel appearing on behalf of the petitioner submits that in a criminal prosecution registered under Sections 366A/34 I.P.C. against the accused opposite parties the informant as also the victim girl could not be examined earlier on account of non-receipt of summons within the time. Therefore, a petition under Section 311 Cr.P.C. was filed for examination of the material witnesses including the informant and the victim girl, but the aforesaid petition has been dismissed by the impugned order for want of prosecution. It is further contended that the trial of the accused persons has not been concluded till date and is still pending.

By the order dated 02.08.2013 passed by a Bench of this Court, notices were issued to the accused opposite parties and the learned trial court was restrained from passing final order in the aforesaid session trial.

As noticed above, though the accused opposite parties have entered appearance through their counsel, but none is appearing on their behalf.

After having heard the learned counsel appearing on behalf of the petitioner and learned Addl. P.P. appearing on behalf of the State, this Court finds that the petition filed on behalf of the prosecution under Section 311 Cr.P.C. has not been rejected on merit, rather on account of non-prosecution. In above view of the matter, this Court is of the opinion that one opportunity should be given to the prosecution to produce material witnesses even in exercise of powers under Section 311 Cr.P.C.

For the reasons recorded above, the impugned order dated 20.12.2012 passed in Session Trial No.275 of 2003 by the

learned Adhoc Additional Sessions Judge-Vth, Muzaffarpur is hereby quashed and set aside and the matter is remitted back to the learned trial court. The petitioner is directed to appear before the learned trial court with a certified copy of the present order within a period of one month from today. On his appearance and production of the certified copy of the present order, the learned trial court shall fix a firm date for examination of the material witnesses in exercise of his powers under Section 311 Cr.P.C. However, if the prosecution fails to produce witnesses on the date/dates fixed by the learned trial court and the witnesses are not examined within a maximum period of three months from today, then the learned trial court shall be at liberty to proceed further for disposal of the trial of the accused persons on the basis of the materials available on the record.

The present application stands allowed to the extent indicated above, but with the observations and directions made above.

(Birendra Prasad Verma, J)

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