

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12098 of 2013

Arising Out of PS.Case No. -87 Year- 1997 Thana -ARWAL District- -

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Mahendra Prasad Singh & Anr.

.... Petitioner/s

Versus

The State of Bihar & Ors.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. S.Ehteshamuddin (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 25-06-2015 Heard learned counsel Mr. Rikesh Sinha for the
petitioners and also heard learned A.P.P.

2. This criminal miscellaneous application has been
filed by the petitioners for quashing the order dated 19.02.2013
passed by the learned Additional Sessions Judge-III, Jehanabad in
Sessions Trial No.334 of 2012 whereby the court below rejected
the application filed by the petitioners under Section 311 Cr.P.C.
for recall of P.Ws.1, 4 and 5 for further cross-examination.

3. The learned counsel for the petitioners submitted
that all the offences are compoundable except Section 307 I.P.C.
and since the prosecution party and the accused persons are the
family members, they have already compromised the matter
because the dispute was with respect to a dwelling house. For
bringing this fact in the cross-examination it was necessary for

recall of the witnesses. Therefore, the application was filed for recall of the witnesses but the court below has wrongly rejected the same. According to the learned counsel, Section 307 I.P.C. is also not made out and that a compromise application has already been filed in the court below, therefore, the court below should have allowed the application.

4. On the other hand, the learned A.P.P. objected the prayer.

5. So far the submission of learned counsel that the parties are the family members and there was dispute between them with regard to dwelling house is concerned, these are admitted facts. So far the compromise is concerned also, it is not denied by any party and the application has already been filed.

6. So far recall of the witnesses is concerned, a Division Bench of this Court in the case of **Umesh Ravidas Vs. The State of Bihar, 2015 (2) P.L.J.R. 484** has held that first part of Section 311 Cr.P.C. gives a discretion to the Court to call, recall and re-examine any person as a witness, whereas second part of section is mandatory in nature. A criminal court cannot call, recall or re-examine any witness unless examination of such a person is in the opinion of the Court is essential to just decision of the case while exercising power under Section 311 Cr.P.C. In the present

case, since the parties have compromised and the application has already been filed, there is no question for recall of any of the prosecution witnesses arises for bringing this fact or cross-examining the witnesses on this ground and, therefore, in my opinion it is not essential to recall any of the witnesses for just decision in this case. If the parties have already compromised, the court below shall consider the same at the time of hearing of the case but that may not be a ground for recall of the witnesses and, therefore, I find no merit in this application.

7. Accordingly, this criminal miscellaneous application is dismissed.

Harish/-

(Mungeshwar Sahoo, J)

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