

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 18549 of 2013

Arising Out of PS.Case No. -25 Year- 2007 Thana -GOBARDHANA District- WEST
CHAMPARAN (BETTIAH)

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Gopal Chaudhary @ Gopal Yadav Son of Late Janak Chaudhary Resident
of Village- Bargazara Pakadi, Police Station- Ram Nagar, District- West
Champanan.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Afsar Khan Son of Md. Meraj Khan Resident of Village- Phulkaul,
P.S.- Ram Nagar, District- West Champanan.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

4 02-07-2015 Heard learned counsel for the petitioner,

learned A.P.P. for the State and learned counsel for the

opposite party no. 2.

The present application filed under Section 482
of the Code of Criminal Procedure, 1973 seeks quashing of
order dated 10.04.2012 passed by the 1st Additional Sessions
Judge, Bagaha, West Champanan in Sessions Trial No. 475 of
2008 by which the petition to call for the fardbeyan of a
witness of the case recorded on 22.12.2007 at 1.00 P.M. in
M.J.K. Hospital, Bettiah has been refused.

Learned counsel for the petitioner submits that
in the same incident, there were two injured persons and both
gave their statement to the police but the statement given by
the opposite party no. 2 was treated as the fardbeyan leading



to the institution of the F.I.R. whereas the statement given by the other person namely, Sheikh Jhumna was not brought before the Court. It is submitted that the petition for calling of the said statement recorded by the police had been filed before the Court below on 05.01.2010 which was followed by various steps taken by the Court to get the document but the same was not brought before the Court. The petitioner was then forced to file another application on 09.02.2012 for the same purpose which has been rejected by the impugned order.

Upon perusal of the records of the case and after hearing submissions of learned counsel for the parties, it transpires that earlier the petitioner had moved for the same relief in Cr. Misc. No. 19551 of 2012 which was dismissed as having become infructuous on 28.08.2012. Against the said order the petitioner preferred Cr. Misc. No. 9550 of 2013 for modification and the same was also dismissed on 06.03.20013.

In view of the aforesaid, this Court finds no reason to interfere with the order impugned which has already been considered by a co-ordinate Bench of this Court earlier on two occasions and strictly speaking may not be even maintainable. Further, it appears that if the petitioner was being prejudiced by non production of the said statement of the witness and the Court had also passed order to such an effect way back on 05.01.2010, which was not being complied

with, it was open to the petitioner to have moved before the superior Court for such relief at that point itself. The same not having been done and later on only during the course of trial and examination of witness again the point having been raised, according to this Court is merely a dilatory tactic being neither bonafide nor in the interest of justice moreso in the background of the fact that the petitioner shall be deemed to have acquiesced to the position not having moved for either implementation of the order of the Court below dated 05.01.2010 nor against the order dated 06.03.2013 passed in Cr. Misc. No. 9550 of 2013, in accordance with law.

Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

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