

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20969 of 2013

Arising Out of PS.Case No. -1606 Year- 2009 Thana -COMPLAINT CASE District- BANKA

Atul Mishra S/O Late Shoboha Kant Mishra R/O Village- Bharko, P.S.-
Amarpur, District- Banka

.... Petitioner/s

Versus

1. The State Of Bihar
 2. Brajesh Pathak
 3. Nitesh pathak
- Both sons of Niranjana Pathak
4. Manoranjan Pathak, son of Prabhash Pathak
 5. Sharad Chandra Thakur @ Bachuwa Son of Suresh Thakur
 6. Nirmal Kumar Choudhry @ Tumla, son of Late Sachidanand Choudhary
 7. Sibam Yadav son of Subhak Lal Yadav
- All are resident of village – Bharko, P.S. Amarpur, District – Patna

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr.
For the Opposite Party/s : Mr. Suresh Pd. Singh (App)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

3 14-07-2015 Heard learned counsel for the petitioner, learned
counsel for the Opposite Party Nos. 2 to 7 along with learned
Additional P.P.

Gone through the impugned order. It happens to be
a ridiculous affair followed by the learned Lower Court while
proceeding with the case and counter case. In one case, he had
examined the Doctor and the same doctor, who happens to be
the witness in counter case, was not at all examined. More
particularly in the background of considering the Section 323 of

the Indian Penal Code. Section whereunder charge has been framed is immaterial during course of trial. Therefore, the learned Lower Court should have examined the doctor. Non-examination of doctor, certainly has caused prejudice to the petitioner/complainant.

That being so, the order dated 16.04.2013 is set aside. Petition is allowed.

Moreover, learned Lower Court is directed to issue process, procure attendance of the doctor and examine him at once and thereafter, proceed further in accordance with law.

(Aditya Kumar Trivedi, J)

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