

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49915 of 2012

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Ramnibas Paswan S/O Late Ajab Lal Paswan R/O Village - Bachahi, P.S.
Muffasil, District - Munger

.... Petitioner

Versus

1. The State Of Bihar
 2. Rajesh Kumar Paswan S/O Ram Niwas Paswan
 3. Pankaj Kumar S/O Ram Nibas Paswan
- Both 2 and 3 are resident of village- Bochahi, P.S. Mufassil, District-
Munger.
4. Smt. Binod Devi @ Binoda Devi W/O Kampani Paswan resident of
Mohalla - Mohanpur Jamalpur, P.S. Jamalpur, District - Munger

.... Opposite Parties.

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CORAM: HONOURABLE MR. JUSTICE AMARESH KUMAR LAL
ORAL JUDGMENT
Date: 14-05-2015

This application has been filed for quashing the order dated 4.1.2012 passed by Sri S. K. Singh, learned Judicial Magistrate, 1st Class, Munger in Complaint Case No. 515 C/2004 and the order dated 5.9.2012 passed by the learned Sessions Judge, Munger in Cr. Rev. No. 46 of 2012 by which the order passed by the learned Magistrate has been confirmed.

It is submitted that Complaint Case No. 515 C of 2014 has been filed by the petitioner in which cognizance was taken by the learned Magistrate vide order dated 28.9.2004 against the accused-opposite party nos. 2 to 4 for the offence punishable under Sections 420, 423, 471 and



120B IPC. On 31.11.2010 charges were framed against the accused on the basis of the evidence adduced before charge and the case was adjourned for evidence after charge and the date was fixed on 8.12.2010. On 30.11.2011, 15.2.2011, and 13.4.2011 time was granted to the petitioner to produce witnesses and on 9.5.2011 the petitioner was given the last opportunity to produce the witnesses. On 8.6.2011 the petitioner was partly cross-examined and his cross-examination was completed and the case was adjourned to 9.8.2011 for further evidence. The evidence of the prosecution was closed on 18.10.2011 without examining the further two prosecution witnesses. Thereafter, the petitioner filed an application under Section 311 Cr. P.C. for examination of the remaining two prosecution witnesses which was rejected by the learned Magistrate vide order dated 4.1.2012, against which Cr. Revision No. 46 of 2012 was filed and it was also dismissed vide order dated 5.9.2012.

One of the witnesses Sri Niwas Paswan who is working in police department was posted in Jharkhand and he could not be granted leave for the said purpose, as such, the petitioner was not negligent in pursuing his case and he was prevented to pursue his case due to the reason which was not

under his control.

Learned counsel for opposite parties has submitted that the petitioner had been negligent in pursuing his case and after giving him opportunity the impugned order had been passed and the prosecution evidence was closed.

It appears that the petitioner could not produce his witness for examination as one of his witnesses Sri Niwas Paswan was working in Police Department in the State of Jharkhand and he was not granted leave.

It appears that cross-examination of witnesses is essential in the interest of justice. The production of witness Sri Niwas Paswan was beyond the control of the petitioner.

It is well settled that under Section 311 Cr.P.C. trial Court has power to summon, examine or recall and re-examine any witness if his evidence appears to be essential for just decision of the case.

Learned counsel for the petitioner has submitted that he will produce the two witnesses for their cross-examination and conclude his evidence within a month.

Considering the facts and circumstances, in my opinion, the impugned orders are not fit to be sustained and they are, accordingly, set aside subject to payment of

Rs.500/- as a cost to opposite parties. After the payment of cost the petitioner will produce two witnesses before the learned court below and conclude his evidence within a month from the date of receipt/production of this order.

Accordingly, this application is allowed.

(Amaresh Kumar Lal, J)

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