

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40209 of 2012

Arising Out of PS.Case No. -14 Year- 2009 Thana -null District- BHOJPUR

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Jai Shankar Paswan son of Sri Bechan Paswan, resident of village-Matiyara Chakia,
P.S.-Koilarwar, District- Bhojpur

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate

: Mr. Prabhu Narayan Sharma, Advocate

For the Opposite Party/s : Mr. Raj Ballabh Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-04-2015

This application under section 482 of the Code of Criminal Procedure has been filed for quashing of the order dated 18th April, 2012 passed by the learned Additional Sessions Judge, Fast Track Court No.V, Ara in Sessions Trial No.213 of 2010/214 of 2010 arising out of Koilarwar P.S. Case No.14 of 2009 by which the prayer of the petitioner to recall P.W.1 Nandjharo Devi and P.W.2 Sarvjeet Paswan has been rejected.

2. It has been contended that P.W.1 Nandjharo Devi and P.W.2 Sarvjeet Paswan were examined and cross-examined and discharged by the court below but certain relevant questions could not be asked from them and, hence, it would be necessary in the interest of justice to recall them for further cross-examination.

3. I have perused the impugned order passed by the court



below. The court below has considered the matter and opined that sufficient opportunity was given to the defence to cross-examine these two witnesses and exhaustive cross-examination was made by the defence. Apparently, the alleged occurrence had taken place in the intervening night between 23rd and 24th January, 2009. The aforesaid two witnesses were examined on 16th August, 2010 and 30th August, 2010 respectively and after a lapse of about one year and two months from the date of their examination an application was filed before the trial court on 14th November, 2011 praying therein to recall those two witnesses for further cross-examination. On 10th December, 2011 a supplementary petition was filed wherein it has been disclosed that what are the questions required to be asked from those witnesses.

4. At the time of argument, learned counsel for the petitioner has produced a certified copy of the deposition of the aforesaid two witnesses. Upon examination of the allegations made in the FIR and the evidence led in the court, I am of the view that the questions intended to be asked from the prosecution witnesses are not relevant to the facts of the case.

5. Further, in my considered opinion, the powers under section 311 of the Code of Criminal Procedure are discretionary and the same have to be exercised with great care and caution.

6. Regard being had to the facts and circumstances of the

case, I find no error in the order passed by the court below.
Accordingly, it is dismissed.

Md.S./-

(Ashwani Kumar Singh, J)

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