

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17833 of 2015

Arising Out of PS.Case No. -3 Year- 1991 Thana -NIRMALI District- SUPAUL

1. Niranjana Mahto Son of Baijnath Mahto, resident of village- Nirmali, P.S.-
Nirmali, District- Supaul.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Gopal Prasad Mahto Son of Surya Narayan Mahto resident of village- Nirmali,
P.S.- Nirmali, District- Supaul.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashwani Kumar Tiwary, Adv.

For the Opposite Party/s : Mr. Yogendra kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-04-2015

This application under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') has been filed for quashing the order dated 12.08.2010 passed by the learned Additional Sessions Judge, F.T.C.-III, Supaul in Sessions Trial No. 162 of 1994 arising out of Nirmali P.S.Case No. 03 of 1991, by which the application filed under section 311 of the Code for recall of P.W.3 for his cross-examination has been rejected.

It has been contended that due to inadvertence of the counsel appearing on behalf of the petitioner, the witness, namely, Gopal Prasad Mahto, who appeared before the court as P.W.3, could not be cross-examined and hence in the interest of justice a prayer was made before the court below to recall the said witness for the

purpose of cross-examination, but the said prayer has been refused by the court below vide order dated 12.08.2010.

I have perused the order impugned. I find that despite sufficient opportunity having been given to the defence to cross-examine the said witness Gopal Prasad Mahto, it failed to cross-examine him. Finding no other option, the trial court was compelled to discharge the said witness by order dated 12.08.2010.

It has been contended that a revision application, vide Cr. Rev. No.1659 of 2010, was preferred by the petitioners against the said order dated 12.08.2010 in which, vide order dated 03.05.2013, a Bench of this Court permitted the learned counsel for the petitioner to convert the revision application into an application under section 482 of the Code. The petitioners took no steps thereafter in order to convert the revision application into an application under section 482 of the Code and ultimately on 22nd July, 2013 an order was passed by this Court that in case the petitioner fails to take steps to convert the revision application into an application under section 482 of the Code, the revision application shall be deemed to be dismissed without further reference to the Bench. Despite the aforesaid order dated 22nd July, 2013 no steps were taken for converting the revision application into an application under section 482 of the Code and, thus, the revision application stood

dismissed on 29th July, 2013.

Thereafter, the petitioner has filed the present application on 16th April, 2015 for quashing of the aforesaid order dated 12.08.2010. On enquiry having been made from the counsel for the petitioner regarding stage of the case, no proper reply has been given.

Regard being had to the entirety of the facts, I am not inclined to interfere with the order passed by a Sessions court about four years and eight months back.

In that view of the matter, the application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

U		T	
---	--	---	--