

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41199 of 2012

Arising Out of PS.Case No. -53 Year- 2006 Thana -Khaira District- JAMUI

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1. Matuki Yadav S/O Late Basudeo Yadav Resident Of Vilage- Laxmipur, Police Station- Khaira, District- Jamui.
 2. Kailash Yadav S/O Basudeo Yadav Resident Of Vilage- Laxmipur, Police Station- Khaira, District- Jamui.
 3. Naresh Yadav S/O Basudeo Yadav Resident Of Vilage- Laxmipur, Police Station- Khaira, District- Jamui.
 4. Dipak Yadav S/O Basudeo Yadav Resident Of Vilage- Laxmipur, Police Station- Khaira, District- Jamui.
 5. Muna Devi W/O Late Basudeo Yadav Resident Of Vilage- Laxmipur, Police Station- Khaira, District- Jamui.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amrendra Kumar, Adv.

For the Opposite Party/s : Mrs. Anuradha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-04-2015

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 19th July, 2012 passed by the learned 2nd Additional District & Sessions Judge, Jamui in Sessions Trial No. 251 of 2010, whereby the learned judge, exercising his discretion under section 311 of the Code, has permitted one Usha Devi to be examined as a witness.

It has been contended that the aforesaid order dated 19th July, 2012 passed by the learned trial court is bad in law as the statement of the said Usha Devi was never recorded under section

161(3) of the Code in course of investigation of the case.

In my view, the contention advanced on behalf of the petitioners is fit to be rejected on the sole ground that the power under section 311 of the Code is discretionary in nature. Indeed, such power has to be exercised with great care and caution but the paramount consideration is to do justice in the case. The trial court has considered the application filed on behalf of the prosecution and found the examination of the witness as necessary and hence permitted Usha Devi to be examined in course of trial.

The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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