

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1249 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- AURANGABAD

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1. Arvind Sao
 2. Sanjay Sao
 3. Binay Sao
 4. Guddu Sao
 - 1 to 4 sons of late Bhola Sao
 5. Pintu Sao son of Arvind Sao
- All Resident of Village-Bamhori ,P.S Dew district -Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. Yogendra Choudhary, s/o Naresh Choudhary, r/o village Chandpur P.S. Dew District Aurangabad

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha
For the Opposite Party/s : Mr. A.K. Chaudhary
Mr. Basi Ahmad Khan

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 29-07-2016

Heard Sri Bachan Jee Ojha, learned counsel for the petitioners , Sri A.K. Chaudhary, learned A.P.P. as well as Mr. Basi Ahmad Khan, learned counsel , who has appeared on behalf of the informant /opposite party -2 on notice.

Five petitioners, have approached this court invoking its inherent jurisdiction under section 482 of the Code of Criminal Procedure, with a prayer to quash an order dated 4.12.2015 passed by learned Additional Sessions Judge -I, Aurangabad, in Sessions Trial No. 90 of 2015 / 04 of 2015 arising out of Dew P.S. Case No.



37 of 2014 registered for the offence under section 307 and other allied sections of the Indian Penal Code and 27 of the Arms Act . By the said order the learned Trial Judge has rejected the petition filed under section 233 of the Cr.P.C. filed on behalf of defence for summoning injury report from another case, allegedly counter case vide Dew P.S. Case No. 38 of 2014. Learned counsel for the petitioners placing reliance on a single bench judgment of the Allahabad High Court reported in **2006 Cri.L.J. 1781 Manoj Kumar Swami v. State of U.P.** submits that for the ends of justice once a petition is filed by the defence for summoning document normally such prayer should be allowed. He further submits that for just decision in the matter perusal of injury report was necessary, however the learned Session Judge has rejected the petition without any reason.

Learned A.P.P. as well as learned counsel for the informant have opposed the prayer. It was submitted that in this case long back statement of accused after completion of prosecution evidence was recorded under section 313 of the Cr.P.C. and thereafter altogether six defence witnesses have been examined and still with a view to further delay conclusion of the trial the present petition was filed. He submits that while filing petition it was necessary on the part of the defence / petitioners to bring on record true copy of the

injury report however only photo copy was filed. He further submits that instead of filing a petition for summoning injury report the petitioners were required to obtain certified copy of injury report but only with view to delay conclusion of the trial the present petition was filed with photo copy of the injury report.

Besides hearing learned counsel for the parties I have also perused the material on record. It is true that in a case for just decision if a petition is filed under section 233 (2) of the Cr.P.C. normally the trial court may consider regarding summoning of document, however if prima facie the trial court is satisfied that such petition is filed only with a view to delay conclusion of the trial, the trial court is entitled to reject the such petition. Keeping in view fact that in this case statement of accused under section 313 of the Cr.P.C. was already recorded and altogether six witnesses were examined and still petition was filed with photo copy, the learned Sessions Judge has rightly rejected the petition.

The petition stands dismissed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
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