

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8917 of 2016

Arising Out of PS.Case No. -35 Year- 2008 Thana -FATEHPUR District- GAYA

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1. Damodar Yadav @ Ramautar Yadav son of Daso Yadav, Resident of village- Rato Khurd, P.S.- Fatehpur, District- Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Vilas Yadav son of Late Ghutar Yadav, Resident of village- Rato Khurd, P.S.- Fatehpur, District- Gaya

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ansul,
Mr. Ram Pravesh Nath Tiwari,
For the State : Mr. Binod Kumar No.3, APP

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

3 06-09-2016 Heard learned counsel for the petitioner and learned counsel for the State.

This application has been filed for quashing the order dated 2.2.2016 passed in S.T. No.198 of 2014, arising out of Fatehpur P.S. case No.35 of 2008 by the A.D.J.VII, Gaya by which the court below has allowed the application under Section 311 of the Code of Criminal Procedure and allowed the prosecution to examine three witnesses in support of its case.

Learned counsel for the petitioner submits that though the application was filed in 2012 but they have not pressed it and kept the matter pending. After examination of

prosecution witnesses, defence witnesses have been examined so much so argument has been closed, memorandum of argument has been filed, thereafter this application has been pressed.

The court below in the operative portion of the order has noted, the argument of petitioner that the persons who were not mentioned as witnesses so much so were not examined by the police has been filed for their examination. It has been submitted that the petition has been filed to delay the disposal of the case. Submission of the petitioner is that the application is meant for filling up the lacuna as defence witnesses have already been examined, thereby disclosed the defence. The prosecution case cannot be allowed to use Section 311 of the Code of Criminal Procedure for that purpose. It is well known principle of law that Section 311 of the Code of Criminal Procedure can be exercised at any stage even at the time of delivery of the judgment subject to the condition that the court is satisfied that for the ends of justice witnesses are required to be examined. Here the court below has recorded that during assault his own brother and cousin came forward for protection, and they received injuries, they are witnesses named for examination.

Learned counsel for the petitioner submits that they have not exercised the option which was available under Section 284 of the Code of Criminal Procedure and as such the court below should have rejected the petition.

Be that as it may, Section 311 of the Code of Criminal Procedure is meant for doing complete justice subject to the condition that the court below on the basis of the material available on record finds their depositions are necessary. The court below has recorded the necessity of deposition of witnesses and the court below allowed the application.

This Court does not find any illegality in the order. The petitioner, if like so, may be at liberty to examine witnesses in defence, if any, and cross examine the prosecution witnesses.

Accordingly this application is dismissed.

(Shivaji Pandey, J)

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