

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21446 of 2015

Arising Out of PS.Case No. -17 Year- 2001 Thana -FATEHPUR District- GAYA

Suresh Prasad @ Suresh Prasad Yadav, Son of Late Vishwanath Prasad Yadav,
Resident of village - Dahrampur, P.S. Fatehpur, District - Gaya

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. L. K. Sharma, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-02-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”), the petitioner seeks quashing of the order dated 28.02.2015 passed by the learned *Ad hoc* Additional Sessions Judge-1, Gaya in Sessions Trial No. 144 of 2010 / 315 of 2002, arising out of Fatehpur P. S. Case No. 17 of 2001 registered under Section 302/34 of the Indian Penal Code (for short “IPC”) and Section 27 of the Arms Act, whereby and whereunder the petition filed by the petitioner under Section 311 CrPC for recalling P.Ws. No. 1 to 8 for further cross-examination, was rejected.

2. The petitioner is the informant of the Fatehpur



P. S. Case No. 17 of 2001. In course of investigation, the police found that it was the petitioner, who had killed his own father and had framed some others in the case in order to cover his crime. Accordingly, on completion of investigation, a report under Section 173(2) CrPC was submitted before the Court, wherein the petitioner was sent up for trial for the offences punishable under Section 302 read with 34 of the IPC and 27 of the Arms Act. The Jurisdictional Magistrate took cognizance of the offences and committed the case to the Court of Sessions for trial. The Sessions Court explained charges to the petitioner to which he pleaded not guilty. Accordingly, the trial commenced. The prosecution examined altogether 16 witnesses during trial. They were cross-examined by the defence in detail and thereafter, the trial Court discharged them. At the fag end of the trial, a petition was filed on behalf of the defence to summon P.Ws. No. 1 to 8 for further cross-examination as the matter had been settled between the parties outside the Court. The learned *Ad hoc* Additional Sessions Judge, 1st, Gaya rejected the said petition vide impugned order dated 28.02.2015.

3. Mr. Ramakant Sharma, learned Senior Counsel appearing on behalf of the petitioner has submitted that in view of the changed circumstances, the trial Court ought to have allowed

the application and recalled P.Ws. No. 1 to 8.

4. In my opinion, the application is thoroughly misconceived. The offence punishable under Section 302 IPC is not compoundable one. The power under Section 311 CrPC to summon any person as a witness at any stage of inquiry or trial or other proceeding can be invoked, only if the Court feels a necessity of doing so. Such a power can not be exercised to derail or damage the case of the prosecution, simply because, some witnesses are gained over after they had been examined and cross-examined during trial.

5. In that view of the matter, I find no illegality or irregularity in the impugned order passed by the Court below. Accordingly, the application, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J.)

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