

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20360 of 2016

Arising Out of PS.Case No. -271 Year- 2003 Thana -SURYAGARHA District- LAKHISARAI

1. Vakil Razak S/o Bhagwat Razak resident of village - Katehar, P.S. Suryagarha,
District - Lakhisarai

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Jayaswal

For the Opposite Party/s : Mr. Nand Kishore Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 29-07-2016

Heard both sides.

2. The petitioner has filed this application for quashing the order dated 19.02.2016 passed in Sessions Trial No. 532 of 2013 by which the learned Ad-hoc Additional Sessions Judge V, Lakhisarai has rejected the petition of the petitioner for appointing an Advocate on his behalf and for recalling the informant P.W. 6 for his cross examination.

3. Learned counsel for the petitioner submits that the petitioner is in jail for the last four years. He is a poor man and he engaged a lawyer but due to non payment of fees, his lawyer did not represent him on each and every date and did not cross examine P.W. 6, the informant of the case. P.W. 6 is a very important witness. It is

submitted that the cross-examination of P.W. 6 is necessary for the just decision of the case.

4. It appears that P.W. 6 was examined but could not be cross examined due to non-appearance of the learned lawyer of the accused who is in custody. If the accused fails to cross examine an important witness due to non-availability of his lawyer, it would certainly prejudice his defence. Justice requires that if the accused fails to engage an Advocate, the court should provide him a lawyer from the State panel so that the accused may be represented properly. Therefore, I find that the order impugned suffers from illegality and fit to be set aside.

5. Accordingly, the order impugned is set aside with a direction to provide an Advocate to the accused and allow him to cross examine P.W. 6.

6. With the direction aforesaid, this application is allowed.

(Prabhat Kumar Jha, J)

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