

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26176 of 2016

Arising Out of PS.Case No. -77 Year- 2012 Thana -SAHPUR District- BHOJPUR

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1. Yogendra Ray Son of Late Balram Ray Resident of Village Sarangpur
Police Station Shahpur (bahoranpur O.P) In the distict of Bhojpur

.... Petitioner

Versus

1. The State of Bihar
2. Bala Ray
3. Mantu Ray Both sons of late Harihar Ray
4. Uday nath Ray
5. Uma Shankar Ray
6. Shambhu Ray All Sons of late Radha Kishun Ray
7. Munna Ray Son of Uma Shankar Ray All resident of Vilalge Sarangpur,
Police station Shahpur (Bahoranpur O.P) in the district of Bhojpur

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Akhileshwar Prasad Singh, Sr. Adv.
with Mr. Prabhu Narayan Sharma, Adv.

For the Opposite Parties : Mr. Navin Kumar Pandey, APP 112

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

3 21-10-2016 Heard Shri Akhileshwar Prasad Singh, learned Senior
Advocate, for the petitioner and the Additional Public Prosecutor.

The petitioner has filed this petition under Section 482 of the Criminal Procedure Code for quashing the order, dated 17.05.2016, passed in Sessions Trial No. 321 of 2013 by which the learned Additional Sessions Judge, I, Bhojpur at Ara, dismissed the petition on behalf of the son of the informant to examine Niraj Rai, who is in custody in connection with Bihiya P.S. Case No. 131 of 2015.

The facts, which are relevant for the disposal of this case, are that on the basis of fardbeyan of Bali Ram Rai, Shahpur P.S. Case No. 77 of 2012 was registered under Sections 302 and other sections of the Indian Penal Code and 27 of the Arms Act against opposite parties no. 2 to 7. The police, after investigation, submitted charge sheet vide Charge Sheet No. 18 of 2012 on 29.10.2012, charges were framed and the case was committed to the Court of sessions. During the course of trial, the witnesses were examined and the prosecution case was closed on

16.04.2016. The son of the informant filed a petition under Section 311 of the Criminal Procedure Code to allow the prosecution to examine Niraj Rai, son of Jogendra Rai, who is alleged as a charge sheet witness no. 5 in the charge sheet, but, the learned Additional Sessions Judge, I, Bhojpur at Ara, rejected the petition of the prosecution stating that sufficient time has already been given to the prosecution to examine all the witnesses and the trial is to be concluded within two months.

Shri Akhileshwar Prasad Singh, learned Senior Advocate, for the petitioner, submitted that Niraj Rai is one of the eye witnesses of the occurrence. He was in custody and he could not have been examined as a prosecution witness and in absence of his evidence the prosecution case shall be prejudiced, but, it appears that more than two and half years was given to the prosecution to examine the witnesses only seven witnesses are arrayed in charge sheet, but, the prosecution has not been able to examine one charge sheet witness, Niraj Rai, during the period of two and half years and subsequently in view of the directions of this Court to conclude the trial within two months, the prosecution case was closed and the case is fixed for judgment on 22.10.2016 as submitted by the learned counsel for the petitioner, therefore, at this stage when the case is fixed for judgment I do not feel it appropriate to allow the prosecution to examine any witness.

On consideration of facts, aforesaid, I do not find any merit in this case and, accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

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