

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1870 of 2016

Arising Out of PS.Case No. -3 Year- 1979 Thana -BIKRAMGANJ District- SASARAM (ROHTAS)

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1. Ram Niwas Pandey @ Sri Niwas Pandey, S/o late Mahadeo Pandey null
 2. Manoranjan Pandey S/o Ram Niwas Pandey
 3. Shiv Munni Pandey@Shesh Munni Pandey S/o Late Bashudeo Pandey
 4. Dinehswar Pandey@Bindeshwar Pandey S/o late Ram Gacchi Pandey
 5. Kamla Pandey S/o Parma Nand Pandey
 6. Ram Narayan Pandey S/o Parma Nand Pandey
 7. Parma Nand Pandey@Parma Pandey S/o late Dev Nanadan Pandey
 8. Krishna Pandey S/o late Mutur Pandey All above are resident of Vill-Jogeya, P.s Bikram Ganj, Dist Rohtas.
 9. Brahma Nand Missir S/o late Ram Dayal Missir
 10. Vikarma Missir S/o late Dayal Missir.
 11. Param Hansh Missir S/o late Laxman Missir
 12. Raj Bansh Missir S/o late Awadh Nath Missir@Awadh Bihari Missir
- All above are resident of Vill- Madhopur , P.s Bikram Ganj,District Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ram Sweresh Rai-Sr. Advocate
 Mr. Binod Kumar Singh-Advocate
 For the Opposite Party/s : Md. A. Haque Sahara-(A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 08-08-2016

Heard learned counsel for the petitioners as well as
 learned Additional Public Prosecutor.

2. Under present petition, petitioners have taken a novel method whereunder at one occasion, the order of framing of charge has been challenged while at the other end, the order dated 11.07.2015 passed by the trial Court at the fag end of prosecution case has also been challenged.

3. It has been submitted on behalf of petitioners that



in terms of order passed by the Hon'ble Apex Court (Annexure-5) under Cr. Appeal No.1051 of 2002 arising out of S.L.P. (Cri) No.1623 of 2002 while setting aside the order of this Court whereby and whereunder order of cognizance was set aside, it was directed to raise the issue at the time of trial or at the time of framing of charge, therefore, the same has been raised.

4. Side by side, it has also been pleaded that by the order impugned dated 11.07.2015, the learned lower Court had rejected the prayer of the petitioners to call for the I.O. by exercising extraordinary power having vested to the Court under garb of Section 311 of the Cr.P.C.

5. The learned Additional Public Prosecutor opposed the prayer.

6. After going through the order of the Hon'ble Apex Court, it is evident that no opportunity was given to the petitioners at any score and for better appreciation, the same is quoted below:-

"Further, at this stage, there was no necessity of making any observations on merits by the High Court as that is required to be decided at the time of trial or at the time of framing of charges."

That was the procedure perceived by the Hon'ble



Apex Court which, could not be treated as an opportunity having been granted at the end of the Hon'ble Apex Court while setting aside the order of this Court. Therefore, challenging the order of the cognizance at such belated stage when all the material witnesses have already been examined appears to be nothing, but a mockery of a procedural law.

7. In similar way, the accused could not coerce the Court to exercise extra-ordinary power vested to it in terms of Section 311 of the Cr.P.C. to examine the witness. Applicability of Section 311 Cr.P.C. and that too, when the prosecution was still going on at the behest of accused is found non-tenable in the eye of law.

8. Applicability of Section 311 Cr.P.C. always happens to be exercisable for just decision of the case. Furthermore, when the prosecution case was opened, then in that event, the accused would not have any legal, valid base to raise the plea and ask for examination of particular witness which, in the background of Section 226 of the Cr.P.C. is found bestowed upon the prosecution and further, at the initiation of the Sessions Trial is found duly exposed at the end of the learned Additional Public Prosecutor that by which evidence, he is going to substantiate the case of the prosecution. That being so, till the

prosecution case is found running the accused has nothing to say, more particularly, so far this case is concerned, that had originated on the basis of the protest petition. Therefore, at the present moment, the prayer of the petitioners/ accused is found misconceived.

9. Consequent thereupon, instant petition is found devoid of merit and is accordingly, rejected.

10. However, it is made clear that in case so wished and desired at the end of the petitioners to have examination of the I.O., then in that event, they may have an opportunity in terms of Section 233 of the Cr.P.C.

(Aditya Kumar Trivedi, J)

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