

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15611 of 2016

Arising Out of PS.Case No. -166 Year- 2009 Thana -MUZAFFARPUR SADAR District-
MUZAFFARPUR

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1. Pappu Kumar @ Dharmendra Kumar @ Pappu Yadav @ Dharmbir
Kumar Yadav Son of Nagina Yadav R/o Village Mamarkhabad, P.S.
Pandarak, District Patna Petitioner/s

Versus

1. The State of Bihar Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravi Ranjan, Advocate
For the Opposite Party/s : Mr. Uday Pratap Singh (APP)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

2 12-08-2016 Heard both sides.

The petitioner has filed this petition under Section 482
of the Cr. P. C. for recalling P.W. 5, the I.O., of the case.

It is submitted that P.W.6, Rabri Devi, and P.W.8,
Poshan Yadav, were examined and cross-examined after the
evidence of P.W. 5, the I.O., therefore, the defence could not draw
attention of P.W. 5 with regard to evidence of P.W. 6 and P.W. 8.
and, accordingly, a petition under Section 311 of the Cr. P.C. was
filed to recall P.W. 5 but the learned 7th Additional Sessions
Judge, Muzaffarpur rejected the petition of the petitioners for
recall of P.W.5.

It appears that P.W. 5 was examined and cross-
examined before the examination of P.W. 6 and P. W. 8. P.W. 8 is
informant of the case. It also appears that the defence has drawn

attention of both the witnesses but the attention of PW 5 could not be drawn with reference to statement of these two witnesses and, therefore, further cross-examination of P.W. 5 is necessary and if the defence is precluded from examining the I.O., defence case would be prejudiced.

Considering the facts, I find force in the contention of the learned counsel for the petitioner that P. W. 5 is required to be further examined and his attention is required to be drawn with regard to evidence of P.W. 6 and P.W. 8. Therefore, it appears that the learned Additional Sessions Judge committed illegality in rejecting the petition of the defence for recalling the P.W. 5 for his further cross- examination.

Accordingly, the impugned order dated 07.11.2015 passed by learned 7th Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 362 of 2010, arising out of Muzaffarpur Sadar P.S. case No. 166 of 2009, is set aside with a direction to the learned Additional Sessions Judge to recall P.W. 5 for further cross-examination.

This quashing petition is, accordingly, allowed.

(Prabhat Kumar Jha, J)

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