

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47721 of 2015

Arising Out of PS.Case No. -118 Year- 2001 Thana -DHURAIYA District- BANKA

=====

Badrujjama @ Md. Badrujjama son of Late Makbul Ahmad, resident of village Bishanpur, P.S. Dhoraiya, District Banka.

.... Petitioner

Versus

1. The State of Bihar.
2. Azhar Hussain.
3. Md. Akhtar Hussain.
4. Md. Nayeem, all sons of Late Shekhawat.
5. Maroof.
6. Farooque both sons of Azhar Hussain.
7. Jamil.
8. Nasim, both sons of Md. Akhtar Hussain.
9. Mahfooz son of Late Ajij.
10. Kamal son of Late Amir.
11. Jasim son of Late Lakkho.
12. Lutto son of Ismail.

All residents of village and P.O. Bishanpur, P.S. Dhoraiya, District Banka.

.... Opposite Parties

=====

Appearance :

For the Petitioner : M/s. Basan Kumar Mishra and
Ranjeet Kuamr Das, Advocates

For the State : Mr. Jharkhandi Upadhyay, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-01-2016

By way of the present application under Section 482 of the Code of Criminal Procedure, the petitioner, who is informant of Dhoraiya P.S.Case No.118 of 2001 dated 18.12.2001 registered under Sections 147, 148, 149, 323, 341, 325 and 504 of the Indian Penal Code giving rise to Sessions Trial No.391 of 2008 seeks quashing of the order dated 10.9.2015 passed by the learned Additional District and Sessions Judge-IV, Banka whereby the application filed for

summoning the doctor and I.O. under Section 311 of the Code of Criminal Procedure has been rejected.

Learned counsel for the petitioner has submitted that the prosecution has already examined four witnesses during trial and the Doctor and the Investigating Officer are yet to be examined. In absence of the examination of the doctor and the I.O., the case of the prosecution shall be greatly prejudiced. He has contended that after rejecting the application filed under Section 311 of the Code of Criminal Procedure, the court below has already recorded the statements of the accused under Section 313 of the Code of Criminal Procedure and the case was fixed on 3.10.2015 for defence evidence.

It is contended that while passing the impugned order dated 10.9.2015, the trial court has failed to consider the object of provision of Section 311 of the Code of Criminal Procedure and it ought to have exercised the power in order to achieve a just decision in the case.

I have heard learned counsel for the petitioner and perused the impugned order dated 10.9.2015.

It would be apparent from the impugned order that the prosecution was given sufficient opportunity to produce its witnesses. The case is of the year 2001. The charges were framed as back as on 14.7.2009 and since then the prosecution was given six years to

produce its witnesses. Despite all efforts taken by the Court, the prosecution has failed to produce the Doctor and the Investigating Officer and under such circumstances, the Court was left with no option, but to close the prosecution case. Article 21 of the Constitution guarantees right to speedy trial. The prosecution cannot have the luxury of keeping the trial pending for an indefinite period.

In my opinion, under such circumstances, the Court has rightly rejected the application filed by the informant. The belated application filed on behalf of the petitioner for summoning the Doctor and I.O. is nothing but an effort to prolong the litigation and harass the accused persons.

Accordingly, the application being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J)

N.H./-

U		T	
---	--	---	--