

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23340 of 2016

Arising Out of PS.Case No. -218 Year- 2014 Thana -MOTIHARI TOWN District-
EASTCHAMPARAN(MOTIHARI)

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Ram Babu Prasad, son of late Rajendra Prasad, resident of Panch Mandir Chowk, Visati Patti, P.S. Motihari Town, District East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shambhu Prasad
3. Suresh Prasad Both sons of Baiju Prasad resident of mohalla Amlapatti, Dharamsamaj Road, P.S. town, district East Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. A. K. Thakur-Advocate
Mr. Nilesh Kumar-Advocate
Mr. Ravi Ranjan-Advocate
M/s Kiran Thakur-Advocate
For the Informant : Mr. Sanjeet Deokuliar-Advocate
For the State : Mr. Anita Kumari Singh (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 05-08-2016 Heard learned counsel for the petitioner, learned counsel for the respondent nos.2 and 3 as well as learned Additional Public Prosecutor.

2. Gone through the order impugned.

3. After going through the order impugned dated 20.04.2016, it appears that the learned lower Court in more enthusiastic manner dealt with the issue and further, the reasoning so assigned by the learned lower Court by rejecting the petition filed on behalf of prosecution, happens to be contrary to the spirit of law.



4. The only extraordinary power which the Court has and further, permitted to exercise is under Section 311 of the Cr.P.C. which, the Court should exercise in the interest of justice at any stage of the trial for just decision of the case. However, when a prayer is made on behalf of prosecution that the prosecution does not want to examine certain witnesses, the same should not be dealt with in a manner as indicated under the order impugned in the background of the fact that it happens to be the prosecution, who carries the burden to prove its case. In order to prove its case, it is the prosecution, who has to produce oral as well as documentary evidence. The nature of evidence going to be produced during the course of trial is found duly exposed under Section 226 of the Cr.P.C. That means to say, once the prosecution had disclosed that by which evidence, he is going to prove its case, the Court cannot direct the prosecution to produce other witnesses than whatever prosecution intends. In likewise manner, under Section 230 of the Cr.P.C., the Court has to examine those witnesses, whom the prosecution produces and further, to facilitate presence of witnesses, summon or warrant whichever may be, is to be issued on the prayer of the prosecution. Therefore, the Court is not competent to reject the petition of the prosecution divulging the fact that it does not intent to examine certain witnesses nor the



Court is under authority to command directing the prosecution to examine particular witnesses, irrespective of wishes of the prosecution. As a result of which, the order impugned is found illegal and is set aside.

5. Accordingly, instant petition is allowed.

6. However, it will be opened to the learned lower Court to exercise its power under Section 311 Cr.P.C., in case, presence of those witnesses are found necessary for just decision of the case

(Aditya Kumar Trivedi, J)

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