

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44474 of 2013

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1. Ashok Kumar Mehta Son of Kari Mehta.
2. Kari Mehta Son of Late Mahadeo Mehta.
3. Devki Devi @ Deoki Kumari Wife of Kari Mehta.
4. Binod Kumar Mehta Son of Kari Mehta.
5. Urmila Kumari @ Urmila Devi D/O Kari Mehta.
6. Mauji Lal Mehta Son of Kamaldhari Mehta.
7. Ashok Kumar Mehta Son of Bindeshwari Mehta
All are Resident of Village- Babhangama, Tola Narha, Police Station-
Triveniganj, District- Supaul

.... Petitioners

Versus

1. The State of Bihar
2. Asha Devi Wife of Ashok Kumar Mehta, Resident Of Village- Babhangama,
Tola Narha, Police Station- Triveniganj, District- Supaul

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. R.C. Thakur, Adv.
Mr. Kamal Kishore Singh, Adv.
For the State : Mr. G.S. Gupta, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL JUDGMENT
Date: 17-08-2016**

1. Heard learned counsel for the petitioners as well as
learned Additional Public Prosecutor for the State. No one appears on
behalf of opposite party no. 2(complainant) on repeated call. It is not
out of place to mention here that when this matter was placed before
this Bench on 10.08.2016, on that date also, no one had appeared on
behalf of opposite party no. 2.

2. This petition has been filed under Section 482 of the

Cr.P.C. for quashing the order dated 10.09.2013 passed in Complaint Case No. 195 C of 2005 by which and whereunder the learned court below allowed the petition filed under Section 311 of the Cr.P.C. on cost of Rs. 500/- and permitted the opposite party no. 2 to produce witnesses after charge.

3. Submission on behalf of the petitioners is that the opposite party no. 2 filed Complaint Case No. 195 C of 2005 in the year 2005 for the offences punishable under Sections 498(A), 323, 379, 384, 406, 467, 468, 469, 504 of the Indian Penal Code and subsequently, cognizance was taken on 01.09.2005 for the offences under Sections 498(A), 323, 384 of the Indian Penal Code and Section 3/4 of D.P. Act and accordingly, the evidence before charge was recorded and subsequently, charge was framed on 10.02.2011 but even after giving more than one and half years the complainant failed to produce her witnesses and subsequently, on 16.03.2012, the complainant's evidence was closed and the statement of petitioners were recorded on 23.03.2012 and the case was posted for argument but in the meantime, on 14.02.2013, a petition under Section 311 of the Cr.P.C. was filed on behalf of opposite party no. 2 stating therein that due to mistake the witnesses of opposite party no. 2 could not be examined after charge and accordingly, it was prayed to permit her to get examine her witnesses after charge. The aforesaid petition was

challenged by the petitioners by filing rejoinder and the learned court below having heard the parties passed the impugned order dated 10.09.2013 against which this quashing petition has been filed.

4. Learned counsel for the petitioners submits that provision of Section 311 of the Cr.P.C. cannot be utilized for filling up lacuna of the prosecution case and in the present case, it is admitted case of the complainant that due to her carelessness and negligence witnesses could not be examined after charge.

5. Section 311 of the Cr.P.C. says that:- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decisions of the case.

6. The first part of above stated Section is discretionary which enables a Court to summon any person as a witness at any stage of the enquiry, trial or other proceeding and the second part of aforesaid Section goes to show that if examination or re-examination of any witness appears to be essential for just and proper decision of the case, the Court is bound to examine the aforesaid witness.



7. In the present case, admittedly, due to laches of the opposite party no. 2 her witnesses could not be examined. In the present case, it would appear from perusal of the record that complaint case was filed in the year 2005 and charge was framed on 10.02.2011 and evidence after charge was closed on 16.03.2012 after giving ample opportunity to the complainant to adduce her evidence. Furthermore, the record shows that the statement under Section 313 of the Cr.P.C. was recorded and case was posted for argument and several adjournments were given for argument but on 14.02.2013 a petition under Section 311 of the Cr.P.C was filed which was allowed by the court below passing impugned order. The above stated facts go to show that the complainant has been extremely negligent in prosecuting her case and she is only interested to drag the litigation for indefinite period. Furthermore, it is obvious that she failed to produce her witnesses in spite of the fact that she got near about one year for production of her witnesses.

8. It is well settled principle of law that the power given under Section 311 of the Cr.P.C. cannot be exercised to fill up the lacuna of the prosecution case and, therefore, I am of the opinion that the learned court below has committed error in passing the impugned order which cannot be sustained in the eye of law.

9. On the basis of aforesaid discussions, this quashing

petition is allowed and accordingly, the impugned order dated 10.09.2013 passed in Complaint Case No. 195-C of 2005 is set aside. However, the learned court below is directed to dispose of above stated case within a month from the date of receipt/production of copy of this order.

(Hemant Kumar Srivastava, J)

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