

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32182 of 2017

Arising Out of PS.Case No. -212 Year- 2015 Thana -RAGHUNATHPUR District- SIWAN

- =====
1. Kedar Singh
 2. Haran Singh

Both sons of Late Nageshwar Singh, resident of village-Siwri, P.S.-Asson,
District-Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. Rakesh Kumar Singh son of Late Premchand Singh, resident of village-Patar,
P.S.-Raghunathpur, District-Siwan.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Singh, Advocate
For the Opposite Party No.2	:	Mr. Ravindra Kumar, Advocate
For the State	:	Mr. Braj Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-12-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioners for quashing the order dated 05.06.2017 passed by the learned Additional Sessions Judge-III, Siwan in Sessions Trial No.411 of 2016 arising out of Raghunathpur P.S. Case No.212 of 2015 by which he has rejected the application dated 19.05.2017 filed by the petitioners under Section 233(3) of the Cr.P.C.

2. The petitioners are facing trial inter alia for the offence punishable under Section 302 read with 34 of the Indian Penal Code (for short 'the I.P.C.'). Earlier, they filed a petition on 21.02.2017 before the trial court to summon charge-sheet witnesses, namely,



Rajendra Bhagat and Raj Kishore Bhagat. The contention of the petitioners in that case was that their examination as witness is necessary for just and proper decision of the case. The said application dated 21.02.2017 filed by the petitioners was rejected by the trial court vide order dated 04.03.2017. Thereafter, the petitioners filed another petition on 19.05.2017 under Section 233(3) of the Cr.P.C. to issue process for compelling the attendance of said Rajendra Bhagat and Raj Kishore Bhagat and examine them as the witnesses, which was rejected by the trial court vide impugned order dated 05.06.2017.

3. Assailing the impugned order dated 05.06.2017, learned counsel for the petitioners submitted that the court below has rejected the application filed on behalf of the petitioners in utter haste without assigning any cogent reason. He submitted that the testimony of Rajendra Bhagat and Raj Kishore Bhagat is essential in the case for arriving at the truth of the matter and prove innocence of the petitioners. According to him, the prosecution is trying to withhold the important witnesses with a view to deny the right of fair trial to the petitioners and their non-examination would certainly prejudice the case of the petitioners.

4. Per contra, learned Additional Public Prosecutor appearing for the State submitted that the defence cannot compel the prosecution to examine a witness, who has been gained over by the



defence. He submitted that the two witnesses whose testimony the defence wants to be recorded have turned hostile to the prosecution and, thus, the prosecution is not interested in examining them during trial. In case, the defence feels that their non-examination during trial has prejudiced their case, it may take this point during argument. However, the repeated filing of petitions by the defence is only for the purpose of delaying the trial. He submitted that the petition has rightly been rejected as the same was vexatious in nature and was filed in order to defeat the ends of justice.

5. Learned counsel for the informant has supported the contentions advanced on behalf of the State.

6. I find force in the submissions made by the learned counsel for the State.

7. The prosecution has already examined all its witnesses on whom it places reliance. Since the prosecution came to a conclusion that the witnesses, namely, Rajendra Bhagat and Raj Kishore Bhagat have gone in collusion with the accused persons, it made a request to the court not to examine them as prosecution witnesses. A similar petition filed earlier by the petitioners for examining the aforesaid two witnesses as prosecution witnesses was rejected by the trial court as back as on 04.03.2017. The said order dated 04.03.2017 was never challenged by the petitioners before this



Court. However, when the case was posted for arguments after closure of the prosecution and defence case, the petitioners filed another application under sub Section (3) of Section 233 of the Cr.P.C. for summoning the aforesaid two witnesses to be examined as defence witnesses.

8. In the opinion of this Court, the court below has rightly rejected the prayer made on behalf of the petitioners as the application filed under sub Section (3) of Section 233 of the Cr.P.C. was certainly vexatious one and was filed with a purpose to delay the trial and defeat the ends of justice.

9. The application, being devoid of any merit, is dismissed.

10. Let the order passed by this Court be communicated to the trial court forthwith.

11. The trial court is directed to proceed with the trial expeditiously and conclude the same as early as possible.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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