

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.867 of 2016

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1. Suraj Sah @ Jharkhawa son of Ramotar Sah, resident of Mohalla Ghosi Tola, Police Station- Kasim Bazar, District- Munger.

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjiv Kumar Singh

For the Respondent/s : Mr. Sri Sanjay Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 25-01-2017 I have heard learned counsel for the petitioner.

There is no representation on behalf of the State.

2. The petitioner is aggrieved by an order, dated 14.07.2016, passed by learned Additional Sessions Judge V, Munger in S. C. No. 74 of 2015, whereby he has allowed an application filed on behalf of the prosecution under Section 311 of the Code of Criminal Procedure, 1973 (hereinafter referred as the **Code**) to get confessional statements of the petitioner and one Prashant Mishra exhibited in S.C No. 74 of 2015. The said confessional statements are said to have been made by the petitioner and co-accused Prashant Mishra before the police in connection with Kotwali P. S. Case No. 204 of 2015 from which Sessions Trial No. 172 of 2016 has arisen and is pending in the Court of learned Additional Sessions Judge V, Munger. The present S.C. No. 74 of 2015



arises out of another police case being Kotwali P. S. Case No. 195 of 2014.

3. Learned counsel for the petitioner has submitted that the impugned order is beyond jurisdiction for two reasons. Firstly, the Court in exercise of power under Section 311 of the Code may summon any person as witness or examine any person in attendance, though not summoned as a witness or recall and re-examine any person already examined. In exercise of the said power, the Court cannot direct for exhibiting any document. Secondly, it has been submitted that the impugned order refers to Section 30 of the Indian Evidence Act in aid of his exercise of power under Section 311 of the Code. He submits that confession within the meaning of Section 30 of the Indian Evidence Act does not refer to confession made by a person before the police in course of investigation; rather, it refers to proved confession.

4. From the impugned order, I notice that the prosecution in Sessions Case No. 74 of 2015 filed a petition under Section 311 of the Code stating therein that the records of Sessions Trial No. 172 of 2016 were received in the Court and it was found on 30.06.2016 that the petitioner and co-accused Prashant Mishra had given their confessional statements in Kotwali P. S. Case No. 195 of 2014. The prosecution took a plea that the confessional statements



should be exhibited in the said Court for proper adjudication of the S. C. No. 74 of 2015 and S. C. No. 174 of 2016, which are co-related. The prosecution sought to prove and exhibit the said two confessional statements. It transpires that three persons were apprehended by the police from a room of a hotel and certain arms and explosives were recovered from their possession. They are said to have confessed before the police that they worked in the gang of one Prashant Mishra, this petitioner and one Dayanand and at their instance; they had assembled in the said hotel to commit dacoity in the house of a businessman, who had refused to pay ransom to said Prashant Mishra and Suraj Sah (the petitioner(. On the basis of these facts, Kotwali P. S. Case No. 195 of 2014 came to be registered on 12.07.2014. Another F.I. R. was filed on 21.07.2014 to the effect that some persons had exploded bomb on his gate and that he had been asked to pay ransom through telephone call on 05.07.2014 leading to registration of Kotwali P. S. Case No. 204 of 2014. It transpires that prior to this, the said informant had filed another First Information Report on 05.04.2014, being Kotwali P. S. Case No. 190 of 2014 making allegation of demand of ransom.

5. It is specific case of the petitioner that at no point of time his confessional statement was recorded before the Court. The so-called confessional statement said to have



been recorded by the police in course of investigation is being directed to be exhibited at the trial.

6 Section 311 of the Code reads thus:-

311. Power to summon material witness, or examine person present. 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 decision of the case.

7. The said provision authorizes a Court to summon material witness or examine any person in attendance, though not summoned as witness. The said power under Section 311 of the Code cannot be exercised for the purpose of calling for any document or issuing direction for the purpose of exhibiting any document.

8. Secondly, Section 30 of the Indian Evidence Act reads thus:-

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.—When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. 1[Explanation.—"Offence", as used in this section, includes the abetment of, or attempt to commit the offence.] Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C". The Court may consider the effect of



this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—"A and I murdered C". This statement may not be taken into consideration by the Court against A, as B is not being jointly tried. COMMENTS Accused's confession cannot be used against co-accused The statement of the accused leading to the discovery, or the informatory statement amounting to confession of the accused, cannot be used against the co-accused with the aid of section 303; Kamal Kishore v. State (Delhi Administration), (1972) 2 Crimes 169 (Del).

9. Section 30 of the Indian Evidence Act states that when more person than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and the some other of such persons is proved, the Court may take into consideration such confession as against such other persons as well as against the person who makes such confession. Firstly, Section 30 of the Indian Evidence Act refers to a situation when a joint trial is being held for the same offence and confession made by one of such persons affecting himself and some other persons is proved.

10. In the present case, there is no reference of any confession of a co-accused having been proved in S. C. No. 74 of 2015. What is being sought to be done by the Court below is that confessional statements of persons



allegedly recorded by the police in course of investigation in a different case leading to a different trial is being directed to be exhibited in the present trial being S. C. No. 74 of 2015. Therefore, the impugned order of the Court below is completely illegal.

11. The impugned order dated 14.07.2016 is beyond jurisdiction and therefore unsustainable. The said order is accordingly, set aside.

12. This application is accordingly, allowed.

ArunKumar/-

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(Chakradhari Sharan Singh, J)

