

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26491 of 2017

Arising Out of PS.Case No. -233 Year- 2013 Thana -SUGAULI District-
EASTCHAMPARAN(MOTIHARI)

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Firoz Ali, son of Nurul Hassan, resident of Village- Baxa, P.S.- Sugauli,
District- East Champaran.

.... Petitioner

Versus

The State of Bihar.

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Krishna Kant Singh, Advocate

For the Opposite Party : Sri Amitesh Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 14-07-2017 The instant application under Section 482 of the Code of Criminal Procedure has been filed for setting aside the order dated 04.05.2017 passed in Session Trial No. 85 of 2015 by learned Additional District and Session Judge-12, East Champaran, Motihari whereby petition dated 10.03.2017 filed on behalf of defence challenging the identity of witness Bipin Kunwar @ Rameshwar has been rejected and the witness Bipin Kunwar @ Rameshwar was permitted for cross-examination.

2. Mr. Krishna Kant Singh, learned counsel for the petitioner has submitted that during trial all the charge-sheet witnesses were examined. When the evidence of the prosecution was to be closed, then on 03.03.2016, prosecution



filed an application praying therein to permit the prosecution to get examined three witnesses, namely, Md. Iliyash, Md. Ajam and Bipin Kumar as they were named in the FIR which was allowed by the learned Additional District and Sessions Judge-12, East Champaran, Motihari vide order dated 09.01.2017. The objection raised by the petitioner that the prosecution had not recorded their statements under Section 161 of the Code of Criminal Procedure and as such the defence will have no opportunity to examine them on the point of contradictions of statements made before the police.

3. Mr. Krishna Kant Singh, learned counsel for the petitioner further contended that the prosecution produced one witness Bipin Kunwar @ Rameshwar on 04.03.2017 for examination. The defence raised objection that the person being examined was not Bipin Kunwar and it was a clear case of impersonation, but the objection raised on behalf of the defence was rejected by the trial court vide order dated 04.05.2017. He submitted that the impugned order passed by the court below is without application of judicial mind and if the same is allowed to continue, it will cause grave prejudice to the defence of the accused persons.

4. On the other hand, learned counsel for the State



submitted that there is neither any illegality nor any irregularity in the impugned order passed by the trial court. He submitted that the prosecution had filed photostat copies of kishan credit card, adhar card and certificate of sarpanch in support of identity of Bipin Kunwar @ Rameshwar and being satisfied about the identity of the witness, trial court had passed the impugned order.

5. I have heard learned counsel for the parties and perused the record.

6. So far as the order dated 09.01.2017 whereby the prayer of the prosecution to permit the examination of three witnesses were allowed, is concerned, it would be pertinent to note that the same is not under challenge in the present application filed under Section 438 of the Code of Criminal Procedure. Hence, it would not be proper for this Court to make any observation in respect of illegality or otherwise of the order dated 09.01.2017.

7. As far as impugned order dated 04.05.2017 whereby the defence was asked to cross-examine the witness Bipin Kunwar @ Rameshwar is concerned, upon examination of record, I find that the learned trial judge has recorded his finding after taking into consideration various documents filed



on behalf of the prosecution in respect of identity of Bipin Kunwar @ Rameshwar such as, voter-list, pass-book, adhar card, kishan credit card, etc.. Examination-in-chief of the witness was conducted by the defence and the witness was even partly cross-examined and thereafter, a dispute was raised regarding his identity.

8. In such circumstance, if the defence wants to establish a fact, it can establish such fact by leading evidence during trial. The defence has yet an opportunity not only to cross-examine the aforestated witness, but also to lead evidence on behalf of the defence during trial.

9. In that view of the matter, I see no illegality in the order impugned. Accordingly, the application filed by the petitioner being devoid of any merit is dismissed.

(Ashwani Kumar Singh, J.)

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