

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39038 of 2016

Arising Out of PS.Case No. -16 Year- 2015 Thana -DHANGAI District- BHOJPUR

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1. Antu Singh
 2. Pintu Singh
 3. Mantu Singh All sons of Late Jagdish Singh, resident of Village & P.O.- Dalippur, P.S. Dhangai, District- Bhojpur at Ara.
 4. Shatrudhan Singh, son of Late Indrajit Singh, resident of Village & P.O.- Dalippur, P.S. Dhangai, District- Bhojpur at Ara.

.... Petitioners

Versus

1. The State of Bihar
2. Raju Singh @ Rajeev Ranjan Singh, son of Late Kashi Yadav, of Village Dalippun, Dhangai, District Bhojpur at Ara

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Y.V.Giri, Sr. Advocate Mr. Nikhil Kumar Agrawal
For the State	:	Mr. Dr. Kumar Uday Pratap
For O.P. No. 2	:	Mr. Ram Nath Singh Yadav

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

8 13-10-2017 Heard learned Counsel for the petitioners and the learned Counsel for the State as well as the learned Counsel appearing on behalf of O.P. No. 2.

The petitioners have filed this application under Section 482 of the Code of Criminal Procedure for setting aside the order dated 6.8.2016 passed by the learned Vith Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No. 240 of 2015 arising out of Dhangai PS Case No. 16 of 2015, whereby the petition filed by the petitioners, the accused persons, for examination of the signature of the deceased informant put on the fardbeyan be



examined by the handwriting expert of the Forensic Science Laboratory and also for calling the Call Detail Report of the prosecution witnesses to ascertain their location at the time of occurrence, was rejected.

The petitioners are accused in Sessions Trial No. 240 of 2015 and have been charged under Sections 302/149 of the IPC and Section 27 of the Arms Act. Initially the FIR was registered only under Sections 307 and other Sections of the IPC except 302, which was added a day after on 23.3.2015 in the FIR.

The prosecution case as per the statement of the informant, is that all the accused persons came to his house in the evening, started abusing him and made indiscriminate firing. One shot pierced his abdomen causing him injury thereafter he was brought to the Sadar Hospital, Ara, and his fardbeyan was recorded and put his signature. The police on conclusion of the investigation submitted charge-sheet. Accordingly, after framing of charge the accused persons were put on trial and the prosecution witnesses were examined. The case was then fixed for examination of defence witnesses and seven defence witnesses were also examined by the accused persons, while the case was fixed for evidence of the defence, a petition was filed by the accused persons under Section 233(3) of the Code of Criminal



Procedure asking the court to get the signature put by the informant on his fardbeyan compared with his admitted signature made by him on the Pass Book of his bank account and also to procure Call Details Report of the SIM of some of the witnesses as they were not present at the place of occurrence.

The trial court by the impugned order rejected the application on the ground that the defence now wants further investigation in the matter by sending the signature put by the informant on the fardbeyan for comparison with the signature put by him on the Pass Book. The another reason given by the court is that the signature put by the informant on the fardbeyan cannot be compared because he signed the fardbeyan in a state of serious injury.

Learned Counsel for the petitioners submits that fair trial cannot be done unless the so called informant's signature put on the fardbeyan is compared with his admitted signature, for the reason that he was seriously injured and was not in a position to sign moreover three of the prosecution witnesses, PW 3, PW 4 and PW 5 were not present at the place of occurrence so Call Details Report of their mobile will be helpful in considering the defence of the accused persons before the Court. The learned Counsel has placed reliance on the case of **Mohanlal Shamji**



Soni vs. Union of India & anr., reported in **1991 Supp (1) Supreme Court Cases 271**, and refers a portion of para 10 of the judgment which is quoted herein below.

“10. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side.....”

However, contrary to that, learned Counsel for the State submits that the defence has been given fair and reasonable opportunity to produce evidence on their behalf and they have already examined seven defence witnesses.

Having considered the rival submissions of both sides, now let us examine whether there is any error in the impugned order or not. In the sessions trial after production of the witnesses by the prosecution under Section 231 of the Code of Criminal procedure and after examining the accused persons under Section 313 Cr.P.C. and hearing the defence if the Court



finds that it is not a case for acquittal then the defence is directed to enter into adducing evidence under Section 233 of the Code of Criminal Procedure and adduce any evidence in support of their case. Sub-section (3) of Section 233 of the Code of Criminal Procedure reads as such:-

“233(3). If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice”.

This provision has been inserted with an objective to assist the defence to compel the attendance of any witness for examining him as defence witness and also the Court may direct for production of any document or thing for that purpose and process may be issued by the court giving reasons for the same. However, an application filed under Section 233(3) Cr.P.C. can be refused if the court finds that it is only for the purpose of causing delay of the trial or vexation or for defeating the ends of justice. This provision is, therefore, categorical that the court can only issue process if the defence of the accused cannot call by



himself any person before the court to examine him as defence witness or if any document or any thing is not in his possession or custody rather in possession of some other person, in such eventuality the court may direct that person by issuing process to produce that document or thing before the court or to examine him as defence witness.

However, in the present case, the accused persons are not asking for issuing process for production of a witness or for production of any document, rather the petitioners seek the signature of the informant made on the fardbeyan to be compared with his other admitted signature by handwriting expert of the Forensic Science Laboratory and also calling for the CDR of witnesses. In other words, it means their request amounts to asking for going in the realm of investigation to be done by the Court.

In the case of Hasan Imam Khan @ Hasne Imam Khan & others vs. The State of Bihar, a coordinate Bench of this Court passed judgment in Cr. Misc. No. 39170 of 2015, wherein it is held that exercise of power conferred under sub-section (3) of Section 233 Cr.P.C. must not be done in routine manner. There must be an extra-ordinary circumstance to persuade the Court to invoke the jurisdiction under the said provision. In the said case



also the accused persons requested for calling the call detail report to prove the mobile location of a particular cellular phone.

Moreover the defence also gets opportunity to cross-examine the prosecution witnesses in order to demolish the case of the prosecution. On query by this Court whether the Investigating Officer examined in this case as PW 7 has been cross-examined on this point that the fardbeyan does not bear the signature of the informant, then the answer was in negative. Moreover sub-section (3) of Section 233 Cr.P.C. does not empower the court to enter into roving enquiry to ascertain the genuineness of the document by sending the same to the Forensic Science Laboratory for its examination.

Therefore, for the aforesaid reasons, the application is bereft of merit.

The application stands dismissed.

(Arun Kumar, J.)

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