

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42591 of 2016

Arising Out of PS.Case No. -150 Year- 2003 Thana -TARAPUR District- MUNGER

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Ranjeet Yadav son of Bauku Yadav, Resident of Village- Rangaun, P.S.
Tarapur, District- Munger.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Ram Sevak Choudhary

For the Opposite Party/s : Smt Pushpa Sinha

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

2 12-01-2017 This matter has been put up before me out of turn on
the basis of mentioning slip filed on behalf of the petitioner.

Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor for the State.

This petition under Section 482 of the Cr.P.C. has been
filed for quashing the order dated 26.07.2016 passed by learned
Sessions Judge, Munger in Sessions Trial No. 222/2004 by which
and whereunder he examined Dr. Yogesh Prasad Sah as P.W.10
but when cross-examination of the aforesaid witness was offered
to defence, the defence raised a point that on the same day i.e. on
26.07.2016 petition under Section 311 of the Cr.P.C. was filed on
behalf of the prosecution for examination of aforesaid doctor and
the learned Sessions Judge has not passed any order on the



aforesaid petition and without disposing of the aforesaid petition, he recorded the examination-in-chief of aforesaid witness.

Learned counsel appearing for the petitioner points out that earlier a petition under Section 311 of the Cr.P.C. had been filed on behalf of the prosecution for examination of the same doctor but the said petition was rejected by the court and the case was posted for argument on 26.07.2016 but all of a sudden prosecution filed a petition under Section 311 of the Cr.P.C. praying therein for examination of the aforesaid doctor and the learned trial court without disposing of the aforesaid petition and without giving any opportunity of being heard to the defence recorded examination-in-chief of the aforesaid doctor and also posted the case on 27.07.2016 for hearing on the petition filed under Section 311 of the Cr.P.C. and, therefore, the order of learned Sessions Judge is contradictory in nature.

It is also informed on behalf of the petitioner that up till now, cross-examination of the aforesaid doctor has not been done.

No doubt, second part of Section 311 of the Cr.P.C. gives ample power to the court to examine any witness whose evidence appears to be essential for just and proper decision of the case but in the present case, when a petition under Section 311 of



the Cr.P.C. was pending, the court ought to have disposed of the aforesaid petition first and then to proceed with the case but the learned Sessions Judge without passing any order on the petition filed under Section 311 of the Cr.P.C. proceeded to record the evidence of concerned doctor and, therefore, I do agree with the submission of learned counsel for the petitioner that learned trial court/Sessions court committed error in passing impugned order. Moreover, the examination-in-chief of the concerned doctor has already been recorded in presence of both parties and, therefore, in my view, the learned Sessions Judge should dispose of the petition filed under Section 311 of the Cr.P.C. first and then proceed with the case further in the light of order passed by him on the above stated petition filed under Section 311 of the Cr.P.C.

In the aforesaid manner, this quashing petition stands disposed of.

(Hemant Kumar Srivastava, J)

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