

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.642 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

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1. Janardan Singh Son of Late Shiv Nandan Singh, Resident of Village- Police Station- Muffasil (Singhoul), District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rambilash Mahto
Mr. Manoj Kumar Singh
Mr. Chandan Kumar Verma
Kumari Anamika Singh

For the Respondent/s : Ms. Asha Kumar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 17-07-2017

Heard learned Counsel for the petitioner and learned Additional Public Prosecutor representing the State.

2. The petitioner is aggrieved by an order, dated 16.05.2017, passed by learned Additional Sessions Judge VI, Begusarai, in Sessions Trial No. 38 of 2015, whereby the learned Court below has rejected an application, filed by the petitioner, to recall PW 1, PW 2 and PW 3 for further cross-examination on the basis of the questionnaire, which was supplied to the learned Court below along with the petitioner.

3. Learned Counsel appearing on behalf of the petitioner has drawn my attention to the questionnaire, incorporated in the application seeking recall of the witnesses,



under Section 231 (2) of the Code of Criminal Procedure, 1973 (in short, 'the Code'), which has been brought on record by way of Annexure-31 to the present application.

4. He has submitted that the answers to the said questions are essential for just adjudication of the trial and in the interest of justice, the learned Trial Court ought to have allowed the application. He has placed reliance on the Allahabad High Court's decision, in the case of **Jawahar Singh v. State of U.P.**, reported in **2004 Cri.L.J. 2413**, Rajasthan High Court's decision, in the case of **Hazari Ram v. State of Rajasthan**, reported in **1994 Cri.L.J. 3758**, and decision of the Supreme Court, in the case of **Raghunandan v. State of U.P.**, reported in **(1974) 4 SCC 186**. He has attempted to impress upon this Court that the cross-examination of prosecution witnesses could not be done properly and, therefore, considering the significance of the questions, which the defence wanted to put to the prosecution witnesses on their recall, the learned Trial Court ought to have allowed the application.

5. I have perused the impugned order. I find that the learned Trial Court has noted the conduct of the defence in, somehow or the other, delaying the trial at the stage of cross-examination. The Trial Court noted that the defence was given ample opportunity to cross-examine the witnesses and the witnesses were thoroughly cross-examined.



6. Section 231 (2) of the Code gives discretion to the Trial Court to permit cross-examination of any witness to be deferred or "recall any witness for further examination". The discretion so vested in the Court to be exercised in appropriate case. The Judge cannot be compelled to exercise the said discretion. The discretion, which has been exercised by the learned Trial Court in the present facts and circumstances of the case, cannot be said to be non-judicious. The Court has, apart from considering the points taken by the defence in the application for recall of the witnesses, has noticed their conduct also.

7. In my opinion, filing of the present criminal revision application is an abuse of the Court and it is frivolous.

8. This application is accordingly dismissed with a cost of Rs. 50,000/- to be paid by the petitioner in the account of Bihar State Legal Services Authority within a period of one month from today.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22-07-2017
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