

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17608 of 2014

Arising Out of PS.Case No. -56 Year- 2001 Thana -JHANJHARPUR District- MADHUBANI

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Narayan Maharaj, Son of Late Saryug Maharaj, r/o village Pragati Nagar Colony,
Ward No. 30, P.S. Madhubani, District Madhubani

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ravi Ranjan, Advocate.
For the opposite party No.2 : Mr. Sanjeet Kumar, Advocate.
For the State : Mr. P.N. Pandit, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 13-09-2017

1. This application under Section 482 of the code of Criminal Procedure has been filed for quashing the order dated 29.08.2013 passed by the learned Sub Divisional Judicial Magistrate, Jhanjharpur, in G.R. Case No. 568 of 2001, Trial No. 1636 of 2013 arising out of Jhanjharpur P.S. Case No. 56 of 2001 by which the learned Magistrate has rejected the petition filed by the petitioner to recall informant (PW-2) for re-examination.

2. Heard learned counsel for the petitioner, learned counsel for the informant (opposite party No.2) and learned counsel for the State.

3. It has been submitted on behalf of the petitioner



that copy of the documents which have been filed during evidence of PW-2 and exhibited on 9.3.2007, was not handed over to the defence. The defence came to know about those documents after taking certified copy of the same. Thereafter, at the stage of defence evidence, the petition was filed on behalf of the defence under Section 311 Cr. P.C. making prayer to recall the informant (PW2) for his re-examination with respect to those documents which have been exhibited during evidence on 9.3.2007.

4. The counsel for the opposite party No. 2 has appeared and has submitted that the informant (PW2) was examined-in-chief on 8.3.2007 and 9.3.2007. Thereafter, he was cross-examined on behalf of the defence on 9.3.2007, 11.4.2007 and 15.4.2007 and discharged. The aforesaid documents have been marked as exhibit on 9.3.2007 during evidence of PW2 without objection and, thereafter, the prosecution evidence has been closed on 24.3.2011 and case was fixed for evidence of defence. In the meantime, a petition under Section 311 Cr. P.C. was filed read with Section 145 of the Evidence Act on 20.10.2011 on behalf of defence. Thereafter, on 20.10.2011 one petition has been filed on behalf of the defence under Section 311 Cr. P.C. read with Section 145 of the Evidence Act making prayer in the court below that list of documents exhibited by the informant on 9.3.2007, has been filed by the prosecution without serving copy of



the same to the defence. The defence has no knowledge of the aforesaid documents dated 9.3.2007.

5. A petition has been filed in the court below on behalf of the defence under Section 311 Cr. P.C. praying therein to recall the informant for re-examination. That petition was dismissed by the learned Magistrate on 29.8.2013. Thereafter, the petitioner filed a Criminal Revision No. 659 of 2013 before the learned Sessions Judge which was rejected by the Sessions Judge vide order dated 3.3.2014.

6. The learned Sessions Judge has mentioned in the aforesaid order that witnesses adduced on behalf of the prosecution (PW2) has been cross-examined at length on behalf of the defence and, thereafter, he was discharged on 15.04.2007. The present petition has been filed under Section 311 Cr. P.C. after a lapse of four years. The learned Sessions Judge has dismissed the petition holding that the learned Magistrate has passed the impugned order dated 29.8.2013 after having discussed all the aspects of the case.

7. This Court is of the view that Section 311 Cr. P.C. clearly makes out that 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.

8. As such, the petition filed by the defence on 20.10.2016 under Section 311 Cr. P.C. making prayer to the Court to recall Prosecution witness No. 2 for re-examination who has already been discharged after proper cross-examination on 15.04.2007, was not maintainable and both i.e. the learned Magistrate and learned Sessions Judge was quite justified in rejecting both the petitions.

9. It has come in the order sheet that the documents were marked as exhibits on 9.3.2007 when examination-in-chief of the informant (PW2) was going on. It has also come in the order of the learned court below that the aforesaid documents were admitted during evidence of PW2 without any objection. Thereafter, the evidence was closed and after recording the statement of co-accused under Section 313 Cr. P.C., the case was fixed for defence evidence.

10. The defence is required to produce the witnesses by which he wants to prove his defence under the provisions of Section 243 Cr. P.C.

11. Section 243(2) Cr. P.C. reads as under:

“If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the



attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers 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 and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

12. The defence cannot be allowed under the provision of Section 311 Cr. P.C. to summon any witness who has already been examined, cross examined at length and thereafter discharged.

13. Therefore, this Court does not find any illegality in the impugned order.

14. The application stands dismissed.

15. The court below will proceed in the trial in accordance with law.

16. The petitioner is given liberty to raise the points of



not granting proper opportunity to him to cross-examine PW-2, with regard to those documents, at appropriate stage, as required.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	03/10/2017
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