

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.878 of 2014

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Madhuresh Singh @ Madhuresh Kumar @ Sanjayanand S/o Late Ramanand Prasad Singh, residing in Ramashray Nagar, Dalsingsarai, P.S. Dalsingsarai, District Samastipur, at present Plot No. T-667 Lohianagar, Kankarbagh, Patna-20.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Hareram Choudhary, S/o Late Bangali Choudhary, resident of Village Sayera, Dalsingsarai, P.S. Dalsingsarai, District Samastipur.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Amrendra Nath Vishawas, Adv.

For the State : Mrs. Indihar Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 08-08-2017

An order, dated 11.06.2014, passed by learned Judicial Magistrate-Ist Class, Dalsingsarai, Samastipur, in Trial Nos. 358 of 2013/327 of 2014, arising out of C.R. No. 221 of 1992, is under challenge in the present criminal revision application, whereby, an application, dated 27.01.2014, filed by the son of the deceased-complainant, under Section 311 of the Code of Criminal Procedure (*in short 'Code'*), has been allowed.

2. Despite valid service of notice upon opposite



party No. 2, he has not chosen to appear. This application is, accordingly, being disposed of on the basis of materials available on the record and submissions advanced on behalf of the petitioner.

3. The complaint case, giving rise to said Trial Nos. 358 of 2013/327 of 2014, was filed on 23.07.1992, with reference to an occurrence which had taken place on 16.01.1992. According to the case of the prosecution, the complainant had seen the son of the accused persons including this petitioner, trying to break open the lock for committing theft in the shop, where the complainant was working as Night Guard. Accused No. 5, namely, Bhola Mahto, was apprehended by the complainant, but the petitioner managed to flee away. According to the case of the prosecution, the petitioner too was subsequently caught. It is also alleged that the other accused persons took away the persons caught by the complainant from his custody and some of them (not this petitioner), snatched a sum of Rs. 200/- from the complainant and wrist watch, worth Rs. 150/-. This is also alleged that the accused persons, in connivance with the police, got the complainant arrested in a false case.

4. This is not in dispute that the complainant died in 2005. It is the specific case of the petitioner that the complainant's



son (opposite party No. 2) filed a petition in the year 2010 before the trial Court that since his father, the complainant, died five years ago, he did not want to adduce evidence and, accordingly, requested the Court to close the proceeding.

5. The evidence of the prosecution was closed on 20.01.2014. Thereafter, on 27.01.2014, the complainant's son filed an application, under Section 311 of the Code, for adducing evidence. The said application has been allowed by the court below.

6. Learned counsel, appearing on behalf of the petitioner, has submitted that the complainant's son (opposite party No. 2) has filed the application before the court below for the sole purpose of harassing the petitioner. According to him, in the year 2010, the opposite party No. 2 had taken specific plea that he did not intend to lead any evidence. That being so, he submits, that there was no reason for entertaining an application filed four years thereafter, under Section 311 of the Code, for summoning the witnesses for their evidence.

7. I find substance in the submission made on behalf of the petitioner. He is correct in his submission that the application filed by opposite party No. 2, four years after he had specifically taken stand that he did not intend to lead any evidence,



does not appear to be *bona fide*. The action of opposite party No. 2 in filing application, under Section 311 of the Code, after so many years, appears to be only for the purpose of putting the petitioner to undue harassment. Learned counsel for the petitioner has rightly relied on a decision of this Court in case of ***Keshav Choudhary & Ors. Vs. The State of Bihar***, reported in **2000 (3) PLJR 220**, to contend that power under Section 311 of the Code should not be exercised as a tool to harass the accused to be used or abused in any manner.

8. The impugned order, in my view, is not sustainable and is, accordingly, set-aside.

9. This application is allowed.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10/08/17
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