

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49291 of 2013

Arising Out of PS.Case No. -2 Year- 2001 Thana -MOHAMMADPUR District- GOPALGANJ

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Sushila Devi, Wife of Ram Nath Yadav, Daughter of Lochan Rai, Resident of Village - Madhopur Turkaha, Police Station - Mahammadpur, District - Gopalganj

.... Petitioner

Versus

1. The State of Bihar
2. Ram Lal Yadav, Son of Late Sadhu Rai, Resident of Village - Madhopur Turkaha, Police Station - Mahammadpur, District - Gopalganj

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Shambhu Prasad Yadav, Advocate
For the Opposite Parties : Veena Rani Pd.(APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

8 04-07-2017 Additional supplementary affidavit has been filed on behalf of the petitioner annexing deposition of P.W1 to P.W.9 as Annexure- 4. Let it be kept on record.

This criminal miscellaneous has been filed for quashing the order dated 05.09.2013 passed by Sri N.L. Prasad, the then learned A.D.J.-IV, Gopalganj in Sessions Trial No. 137 of 2001 (arising out of Mohammadpur P.S. Case No. 02 of 2001) whereby and whereunder the learned A.D.J. IV rejected the petition filed under Section 311 Cr.P.C. to reopen the case for examining the I.O. and doctor as their examination is essential.

Heard the learned counsel for the petitioner, learned



counsel for the opposite party no.2 and learned A.P.P. for the State.

Sessions Trial No. 137 of 2001 which is going on for committing the offence punishable under Section 302 of the I.P.C. and other allied Sections of Indian Penal Code wherein nine prosecution witnesses have been examined. Out of that eight prosecution witnesses are contested and one witness P.W.9 is formal witness. Earlier also the case was closed and again it was closed and petition filed on behalf of the prosecution to reopen the case for examination of I.O. and doctor has been rejected by the impugned order.

Having considered the submissions on behalf of the learned counsel for the petitioner, learned counsel for the opposite party o.2 and learned A.P.P. for the State, I am of the opinion that one chance is required to be given to prosecution to produce the I.O. and doctor for the ends of justice and only on the ground of delay justice cannot be defeated, the doctor and I.O. are important witnesses and their examination is essential. It is true that for their examination unnecessary several adjournments cannot be granted and the case must come to an end. In the result, the impugned order dated 05.09.2013 is hereby quashed. The petition filed by the prosecution under Section 311 Cr.P.C. is hereby allowed and



the prosecution is given chance to examine the I.O. and doctor within 6 (six) months from the date of receipt of the order in the court below and if the prosecution will fail in producing I.O. and doctor within said period, no further chance would be given to the prosecution and the learned court below shall close the prosecution evidence again.

Accordingly, this criminal miscellaneous is hereby allowed with the said observation.

(Jitendra Mohan Sharma, J.)

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