

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40193 of 2017

Arising Out of PS.Case No. -56 Year- 2003 Thana -PAROO District- MUZAFFARPUR

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1. Md. Mazid Khan @ Mazid Khan, S/o Md. Afzal Khan @ Afzal Khan, resident of Village- Mehndi Ganj,
2. Gopal Das, S/o Durga Das, resident of Village- Chandpura Math,
3. Md. Moinuddin Ansari @ Md. Moinuddin, S/o Md. Aasin Ansari, resident of Village- Bali (West) Tola,
All belongs to P.S.- Devriya, District- Muzaffarpur.

.... Petitioners

Versus

The State of Bihar

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate
Ms. Vagisha Pragaya Vakaknavi, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-04-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr. P.C.') has been filed by the petitioners for quashing the order dated 24.06.2017 passed by learned Fast Track Court-II, Muzaffarpur in Sessions Trial No.275 of 2003 arising out of Paroo P.S. Case No.56 of 2003 registered under Section 366A read with 34 of the Indian Penal Code whereby the petition dated 19.06.2017 filed by the petitioners for recalling P.W.12 (victim) for further cross-examination has been rejected.

2. The petitioners have been made accused in Paroo P.S. Case No.56 of 2003 dated 29.03.2003 in which on completion of investigation, charge sheet was submitted against the petitioners



and two others vide charge-sheet no.34 of 2003 dated 31.05.2003 under Section 366A of the Indian Penal Code.

3. After taking cognizance of the offence, the case was committed to the court of Sessions for trial. The trial court framed charges against the charge-sheeted accused persons on 19.01.2004 under Section 366 read with 34 of the Indian Penal Code.

4. In course of trial, altogether 12 witnesses were examined between 26.02.2004 and 24.09.2015 and the case was fixed for recording the statement of accused persons. At this stage, the petitioners filed an application on 19.06.2017 for recalling the victim (PW-12) for further cross-examination, which has been dismissed by the trial court vide impugned order dated 24.06.2017.

5. Learned counsel appearing for the petitioners submitted that after recovery, the victim (P.W.12) was produced before the court of Sub-divisional Judicial Magistrate (West), Muzaffarpur on 05.04.2003 for recording of her statement under Section 164 of the Cr. P.C. The learned Sub-divisional Judicial Magistrate ordered another Judicial Magistrate-1st Class, Muzaffarpur to record her statement, which was recorded on the same date and the victim was handed over to the custody of her father. He submitted that since the victim had stated in her



statement that she was forcibly abducted when she had gone to attend the call of nature from her residence, a question was required to be asked from her as to why she went outside of her house when toilet was already available at her residence. Since this question is of great importance and the same could not be asked by the conducting lawyer at the time of her cross-examination, the defence will be greatly prejudiced if the impugned order passed by the court below is allowed to be sustained.

6. On the other hand, learned Additional Public Prosecutor for the State submitted that there is no error in the order passed by the court below. According to him, the petitioners had filed the application just in order to delay the trial. He submitted that a lengthy cross-examination of the victim was conducted by the lawyer appearing on behalf of the petitioners and on frivolous ground a petition for recall of the witness has been filed on behalf of the defence.

7. I have heard learned counsel for the parties and perused the record.

8. Section 311 of the Cr. P.C. provides powers to the court to summon material witness or examine persons present. It provides any Court may, at any stage on any inquiry, trial or other proceeding under the Code of Criminal Procedure, summon any



person as a witness, or examine any person in attendance, though not summoned as a witness, or recall or 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.

9. A reading of Section 311 of the Cr. P.C. would show that widest of the powers have been given to the Court when it come to the knowledge of the court of summoning a witness or recall or re-examine any witness already examined.

10. While interpreting provision prescribed under Section 311 of the Cr. P.C., the Supreme Court in **Iddar vs. Abida and Ors. [AIR 2007 SC 3029]**, observed: *“The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The decision is limited only for the benefit of the accused and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under*



the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind”.

11. Again, in **Natasha Singh vs. Central Bureau of Investigation [(2013) 5 SCC 741]**, the Supreme Court observed: *“The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results”.*

12. In the present case, keeping the above principles in mind, the trial court has examined the facts of the case and has come to a conclusion that the victim was extensively cross-examined by the defence and all relevant questions were put to her and, hence, her recall for further cross-examination was not required in order to arrive to a just decision of a case. I have also



looked into the cross-examination part of the victim conducted by the defence and I find that the defence has extensively cross-examined the witness. Moreover, I find that the victim was cross-examined by the defence before the trial court on 24.09.2015 and the application for her further cross-examination was filed after almost two years on 19.06.2017. The petitioner has not stated a word in his application filed before the court below as to why a belated application was filed for further cross-examination. The summoning order or the order of recall of witness could not have been passed merely because the lawyer for the defence had been changed, who wanted to put one more question to the victim. Since it was not found necessary for the just decision of the case, the court below rightly rejected the application filed on behalf of the defence.

13. In that view of the matter, I see no merit in this application. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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