

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.55364 of 2017

Arising Out of PS.Case No. -175 Year- 1990 Thana -BIHTA District- PATNA

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1. Arjun Rai, son of Late Bhauchan Rai.
 2. Mathura Rai, son of Late Raghunandan Rai.
 3. Doman Rai, son of Late Ganga Rai.
 4. Binod Rai, son of Sri Ramayan Rai.
 5. Sudama Rai, son of Sri Arjun Rai.
 6. Chhotan Rai, son of Sri Arjun Rai.
 7. Manoj Rai, son of Sri Arjun Rai.
 8. Darshan Rai @ Darshan Yadav, son of Late Karmu Rai.
 9. Ramesh Rai, son of Late Rajendra Rai.

All resident of village-Srirampur Tola, Police Station-Bihta, District-Patna

.... Petitioners

Versus

The State of Bihar

... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Ravi Kant Kumar, Advocate

For the Opposite Party/s : Mr. Nityanand, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-07-2018

The petitioners are being prosecuted in a case inter alia under Section 307 of the Indian Penal Code. In course of trial, altogether nine witnesses were examined by the prosecution including the doctor. They all supported the prosecution case. After examining of nine materials witnesses and after recording statement



of the accused persons under Section 313 of the Code of Criminal Procedure (for short 'Cr. P.C.') when the case was fixed for final argument, a petition was filed on behalf of the accused persons to summon P.W.-3 and 4 for further cross-examination in exercise of power under Section 311 of the Cr.P.C. The said petition was filed by the informant on the ground that subsequently a compromise had been arrived at between the parties and in order to bring on record the evidence of prosecution witnesses regarding compromise, there recall for further cross-examination is essential. The said petition dated 17.04.2017 filed by the accused persons was rejected by the learned Additional Sessions Judge-1st, Danapur in Sessions Trial No.87 of 1991 against which, the petitioners have filed the instant application under Section 482 of the Cr.P.C.

On hearing learned counsel for the parties and perusing the material on record, I find no illegality in the order impugned passed by the court below. The offence punishable under Section 307 of the Indian Penal Code is not compoundable and recall of a witness cannot be made just in order to tamper with the evidence already recorded or to fill up lacuna in the defence case. The power conferred under Section 311 of the Cr.P.C. to summon any person as a witness or recall and re-examine any person already examined is discretionary power of the court and the same



has to be resorted to by the court only if evidence of such person appears to be essential to the just decision of the case.

I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.08.2018
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