

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.57206 of 2017

Arising Out of PS.Case No. -84 Year- 2011 Thana -BENIPATTI District- MADHUBANI

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Deepak Mishra S/o Shyamdeo Mishra, R/o Village- Rampur, P.S.- Madhwapur,
District- Madhubani.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Jha, Advocate

For the Opposite Party/s : Mr. Bhanu Pratap Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-07-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner for setting aside the order dated 19.09.2017 passed by the learned Fast Track Court No.2, Madhubani in S. T. No. 232 of 2012 by which the application filed under Section 311 of the Cr.P.C. for recall of P.W. 4 and the application for adducing defence witness have been dismissed.

2. Learned counsel for the petitioner submitted that the lawyer conducting the case did not cross-examine P.W. 4 when he was adducing his evidence before the trial court and, hence, the defence will greatly be prejudiced if an opportunity is not given to



cross-examine P.W. 4. He submitted that the trial court failed to appreciate that due to fault of the conducting lawyer, the accused facing a trial should not suffer. He further submitted that even the plea of the petitioner for adducing defence witness has not been allowed by the court below vide impugned order dated 19.09.2017 and the case has abruptly been closed.

3. On the other hand, learned counsel for the State submitted that sufficient opportunities were given to the defence to cross-examine P.W. 4. The belated plea taken by the petitioner is nothing but an attempt to delay the disposal of trial before the court below. He contended that if the lawyer had failed to cross-examine P.W. 4, an application for his recall should have been made promptly but it was filed after three years.

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

5. P.W. 4 was examined before the trial court on 04.09.2014. For over three years, the defence did not file any petition for his recall. It was only on 19.09.2017, an application was filed on behalf of the defence to recall him for cross-examination. The trial court after taking note of the fact that sufficient opportunities were given to the defence to cross-examine Guntun Thakur (P.W. 4) but it failed to do so, rejected the application filed under Section 311 of the



Cr.P.C. I find that after examination of all the prosecution witnesses and after recording statement of accused persons under Section 313 of the Cr.P.C., an application was filed before the court for recall of P.W. 4. I further find that as after recording the statement of the accused persons on five consecutive dates the defence failed to adduce any evidence, the defence case was closed and the argument of prosecution was heard. Under such circumstances if the trial court refused to permit the defence to lead evidence, no fault can be found with the impugned order.

6. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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