

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1066 of 2017

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1. Lokesh Singh @ Binod Singh,

2. Amrendra Singh,

Both are sons of Late Harihar Singh, Resident of Village-
Malikana, P.S.- Majhagarh, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Brij Kishore Singh, Son of Late Nathuni Singh, Resident
of Village- Malikana, P.S.- Majhagarh, District- Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s :Mr. Prashant Kumar, Adv.

For the O.P. No. 2 :Mr. Sushil Kumar, Adv.

For the State :Mr. P.K. Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

8 18-08-2018 Heard the learned counsel for the petitioners,
opposite party No. 2 and the State.

The petitioners/accused persons are aggrieved by
the order dated 14.09.2017, passed by the learned Fast
Track Court No.-II, Gopalganj in Sessions Trial No. 326 of
2011, arising out of Majhagarh P.S. Case No. 62 of 2011,
whereby the application preferred on behalf of the
prosecution under Section 311 of the Code of Criminal



Procedure, 1973 (*in short the Cr.P.C.*) for exhibiting a complaint lodged by one of the accused persons and the enquiry of the Court under Section 202 of the Cr.P.C. have been permitted to be exhibited.

The major contention raised on behalf of the petitioners/accused persons is that the provisions of Section 311 of the Cr.P.C. is for recall of a witness and not meant for exhibiting any document or receiving the same.

It appears that during trial, the witnesses were examined and only when the case was fixed for judgment, a request was made by the prosecution under the provisions of Section 311 of the Cr.P.C. for receiving the complaint lodged by one Amrendra Singh, one of the co-accused persons facing trial, against the informant/opposite party No. 2 and others as well as the contents of the enquiry which was held in the aforesaid complaint. The Trial court, though took note of the fact that such an application was filed at a much belated stage, but after going through the documents in question, came to the conclusion that the complaint refers to an allegation between the same set of parties and perhaps, the time and place of occurrence also are the same. In that view of the matter, the Trial Court was of the view that the aforesaid document would render great assistance to the Trial Court in delivering judgment in a proper/holistic manner.



An objection was also raised on behalf of the petitioners/accused persons that the complaint petition and the proceedings of the enquiry under Section 202 of the Cr.P.C. are not public documents and hence they could not be accepted in evidence without formal proof of the same. Since the trial is about to be concluded and only judgment was required to be delivered, the receiving of such evidence will only delay the conclusion of the trial. The aforesaid refrain of the learned counsel for the petitioners/accused persons has been expressed especially because they are in custody for about seven years.

Records of this case reveal that under the orders of this Court, a direction was issued for conducting trial on day-to-day basis and its conclusion within a reasonable time frame.

The provisions of Section 311 of the Cr.P.C., though, is for recall on any witness if it is considered just and expedient by the Trial Court for unraveling the truth and in helping the Court to come to a just conclusion while delivering judgment, but if a document has been received under such provision, it would only be deemed to have been received under the provisions of Section 91 of the Cr.P.C. The forum/section does not always necessarily matter.

This Court is not inclined to interfere with the



order impugned only on the ground that the Court has given a cogent reason for accepting the aforesaid evidence as prayed for by the prosecution, as in the estimation of the Court, it would render help in delivering judgment in the present case. The objection with respect to the aforesaid document, not being public document, can be raised by the petitioners/accused persons at the time of final argument.

The Trial Court is expected to look into the posers raised by the petitioners/accused persons at the time of final argument with regard to the admissibility and reliance upon such documents.

Regard being had to the fact that a reason has been assigned by the Trial Court for accepting the aforesaid evidence, the petitioners/accused persons being in custody for seven years by now and the trial being almost at the stage of its conclusion, this Court is not inclined to interfere with the order impugned.

Whatever objections the petitioner/accused persons have, those could be raised at the time of final argument before the Trial Court.

With the aforesaid observation, this revision petition stands disposed of.

Praveen-II/-

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(Ashutosh Kumar, J)