

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11857 of 2017

Arising Out of PS.Case No. -307 Year- 2013 Thana -SARAIYA District- MUZAFFARPUR

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Ganesh Rai S/o Heman Rai resident of Village - Pokhraiya, P.S. - Saraiya (Jaitpur O.P.), District - Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar.
2. Jiwan Bhagat S/o Late Shrawan Bhagat resident of Village - Pokhraiya, P.S. - Saraiya (Jaitpur O.P.), District - Muzaffarpur.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Chandra Mauli Chaurasia, Advocate
For the Opposite Party/s : Mr. Dinesh Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-03-2018

This application under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') has been filed by the petitioner for quashing the order dated 09.01.2017 passed by the learned Additional Sessions Judge, 3rd, Muzaffarpur in Sessions Trial No. 507 of 2014, arising out of Saraiya (Jaitpur O.P.) Case No. 307 of 2013 whereby the petition dated 03.11.2016 filed on behalf of the petitioner for recalling P.Ws. 1 and 2 for further cross-examination has been rejected.

2. The petitioner has been made FIR named accused in Saraiya (Jaitpur O.P.) Case No. 307 of 2013 dated 31.10.2013 registered under Section 302 read with 34 of the Indian Penal Code.



On completion of investigation, the police found the accusation made against the petitioner to be true and he has been sent up for trial. After taking cognizance of the offence, the court of Magistrate committed the case to the court of session for trial as the offence alleged is exclusively triable by the court of session. In course of trial, after examination of altogether seven witnesses, a petition was filed on behalf of the defence on 03.11.2016 for recalling P.Ws. 1 and 2 for further cross-examination, which has been rejected by the impugned order dated 09.01.2017.

3. Assailing the impugned order dated 09.01.2017, learned counsel for the petitioner submitted that the court below failed to appreciate the law and facts involved in the present case. He submitted that once a petition was filed on behalf of the defence for summoning P.Ws. 1 and 2, who were already examined, it was incumbent upon the court below to have appreciated that the cross-examination of the defence could not have been conducted in the manner as it was required. He submitted that the court below ought to have appreciated the fact that if the aforesaid two witnesses are not examined, the case of the defence would be prejudiced.

4. On the other hand, learned counsel for the State submitted that there is no merit in this application. The petitioner had filed an ambiguous petition in the court below and had not disclosed the reason for recall of P.Ws. 1 and 2. He submitted that though the



court has power to recall a witness in exercise of power conferred under Section 311 of the Cr.P.C., the same has to be done only in exceptional circumstances in order to arrive at a just decision of the case. However, in the present case, the petitioner has failed to point out any justifiable reason for recalling them for further cross-examination.

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

6. Before advertng to the submissions made on behalf of the parties, it would be appropriate to take note of relevant provision of Section 311 of the Cr.P.C. which reads as under :-

“Section 311. Power to summon material witness, or examine person present.-Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and 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.”

7. From a plain reading of Section 311 of the Cr.P.C., it would be evident that at any stage of any inquiry, trial or other proceeding under this Code, in order to find out truth it enables the



court to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, if his evidence appears to be essential to the just decision of the case.

8. The scope and powers of Section 311 of the Cr.P.C. has been dealt with by the Supreme Court in detail in **Natasha Singh vs CBI (State) [(2013) (5) SCC 741]** as under :-

“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. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however,



must be given to the other party.

The power conferred under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection.

The very use of words such as ‘any Court’, ‘at any stage’, or ‘or any enquiry, trial or other proceedings’, ‘any person’ and ‘any such person’ clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is, in fact, essential to the just decision of the case.”

9. Thus, it is to be seen in the present case as to whether summoning of P.Ws. 1 and 2 for further cross-examination on the application filed by the petitioner was essential to the just decision of the case. In order to appreciate the aforesaid aspect, I have looked into the petition dated 03.11.2016 filed by the petitioner before the court below, which is contained in Annexure-2 to the present application. The petitioner has assigned two reasons for summoning P.Ws. 1 and 2. The first ground is that the case is of serious nature in which the petitioner has falsely been implicated



and the second ground is that some legal points could not be asked by the defence at the time of cross-examination and the reply of the same is necessary for this case. Save and except these two vague and ambiguous grounds, no other ground has been taken in the petition filed on behalf of the petitioner before the court below in course of trial. The point of law on which the defence wants further cross-examination of the two witnesses is not even mentioned in the petition. Moreover, the plea that case is of serious nature can not be made a ground for summoning a witness who has been discharged after cross-examination. If the application was so vague and ambiguous, I do not find any illegality in the order passed by the court below whereby the application filed by the petitioner for recalling the aforesaid two witnesses has been rejected. As a matter of fact, there was no material before the court below for summoning those two witnesses. Apparently, the petition filed before the trial court by the accused is just to delay the conclusion of trial.

10. In view of above, I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
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