

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.861 of 2015

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1. Shree Narayan Rai, S/o Late Ram Jatan Rai

2. Hari Narayan Singh, S/o Late Ram Jatan Rai

Both are resident of Vill.- Barwa Khurd, P.O.- Barwa Khurd,
P.S.- Kundwa Chainpur, Distt.- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Bajrangi Rai, S/o Late Sarva Lal Rai, resident of village-
Barwa Khurd, P.O.- Barwa Khurd, P.S.- Kunwa Chainpur,
Distt.- East Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Verma, Adv.

For the State : Mr. Dr. M.K. Gautam, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

2 20-02-2018

Heard counsels for the parties.

The petitioners are aggrieved by the order dated 17.08.2015, whereby the Trial Court has rejected their prayer for being examined at the trial as prosecution witnesses.

The petitioners are the nephews of the deceased and they carry an impression that perhaps the informant/complainant, who is the son of the deceased has



gone in cahoots with the accused persons and, therefore, has not deposited before the Trial Court properly and correctly.

Perused the records.

The Trial Court, while rejecting the prayer of the petitioners has taken note of the fact that the Public Prosecutor has filed a categorical petition before the Court that the prosecution does not wish to bring the petitioners to the witness box for their evidence.

Sections 225 and 301 of the Code of Criminal Procedure, 1973 (*in short 'the Cr.P.C.'*) reads as follows:

"225. Trial to be conducted by Public Prosecutor.—*In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.*

301. Appearance by Public Prosecutors.—*(1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.*

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case."

Every sessions trial is required to be conducted only by a Public Prosecutor. When Sections 225 and 301 of the Cr.P.C. mandate that prosecution shall be conducted by a



Public Prosecutor, it means that all important questions of policy in the course of trial and the attitude to be adopted by the prosecution shall be of the Public Prosecutor, who shall keep complete control and guidance over the manner in which the prosecution would be conducted.

In the case in hand, it is only the presumption of the petitioners that the informant has not deposed correct facts. Such perception of the petitioners cannot be a ground to permit them to be examined as prosecution witnesses when the prosecution has chosen specifically not to examine them at the trial. The Public Prosecutor is the custodian of the prosecution and the Court cannot order the examination of the witnesses of its own accord or on the asking of any person who claims to be having knowledge about the occurrence.

It is further revealed, on perusal of the records, that the son of the deceased has been examined as P.W. 5 and he has not been declared hostile.

Learned counsel appearing on behalf of the petitioners is not in a position, however, to say whether other witnesses have supported the prosecution version or have made a somersault.

In any view of the matter, the Trial Court was absolutely justified in rejecting the prayer of the petitioners



for being examined as prosecution witnesses, without the approval of the Public Prosecutor, conducting the trial.

This Court, therefore, finds no anomaly with the order impugned.

The petition is, accordingly, dismissed.

(Ashutosh Kumar, J)

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