

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32533 of 2017

Arising Out of PS.Case No. -53 Year- 2004 Thana -KHIJARSARAI District- GAYA

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Deenanath Yadav Son of late Rajdeo Yadav r/o village Sultani PS Parasbigaha
District Jehanabad.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Birendra Kumar Kumud, Adv.

For the Opposite Party/s : Mr. Matloob Rab, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-03-2018

In this application filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner is aggrieved by order dated 09.02.2017 passed by the learned Additional District & Sessions Judge-II, Gaya in Sessions Trial No. 314 of 2014 arising out of Khizersarai P.S.Case No. 53 of 2004 whereby the application filed by him for examining the witnesses named in the protest petition has been rejected.

2. The petitioner Deenanath Yadav is the informant of Khizersarai P.S.Case No. 53 of 2004 dated 29.06.2004 registered under Sections 304-B and 201 read with 34 of the Indian Penal Code. The said case was investigated upon and on completion of investigation the police submitted charge-sheet under Section 306 and



201 read with 34 of the Indian Penal Code. The learned Magistrate took cognizance of the offences under which charge-sheet was submitted and committed the case to the court of Sessions for trial. In the said Sessions Trial, charges have already been framed and the trial is going on.

3. It is at this stage a petition was filed by the informant for examining certain witnesses whose statements were not recorded in course of investigation and who were not made charge-sheet witnesses. The said petition filed on behalf of the informant has been rejected by the trial court vide impugned order dated 09.02.2017.

4. Assailing the aforestated impugned order dated 09.02.2017, learned counsel for the petitioner submitted that the investigation was not conducted properly by the Investigating Officer. He submitted that looking at the tainted nature of investigation the informant of the case had filed a protest petition during the pendency of investigation. He submitted that the statements of certain witnesses, who were witnesses to the alleged occurrence of dowry death, were not recorded by the Investigating Officer deliberately and, thus, their examination during trial is necessary in the interest of justice. However, the learned court below erroneously rejected the application filed on behalf of the informant for examination of those witnesses during trial. He submitted that non-examination of those



witnesses during trial would cause great prejudice to the case of the prosecution.

5. On the other hand, learned counsel for the State submitted that the application filed on behalf of the informant in course of trial was thoroughly misconceived. The witnesses named in the charge-sheet are being examined by the trial court and there is no error in the impugned order whereby the prayer of the petitioner to examine certain non-charge-sheeted witnesses during trial has been rejected. He submitted that neither the informant nor the accused can dictate the manner in which a trial is to be conducted. The informant has brought nothing on record to show that examination of such witnesses was necessary in the interest of justice.

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

7. Sub-section (1) of Section 301 of the Cr.P.C. stipulates that 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. Sub-section (2) of Section 301 of the Cr.P.C. further stipulates that 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.

8. Thus, it would be pertinent to note that the provisions prescribed in the Cr.P.C. do not authorize the informant to prosecute an accused in a criminal trial arising out of police case. The informant cannot assume the role of prosecutor in a police case. It is relevant to note that Clause 29 amends Section 372 of the Cr.P.C. relating to appeals from judgment or order of a criminal court. The proviso to Section 372 of the Cr.P.C. inserted by the Code of Criminal Procedure (Amendment) Act, 2008 confers right to the victim to prefer an appeal against any order passed by the court acquitting the accused or convicting for lesser offence or imposing inadequate compensation. However, the legislature has not conferred any right upon the victim or the informant to assume the role of prosecutor in a criminal case. Moreover, in order to enable the court to find out the truth and render a just decision in a case Section 311 of the Cr.P.C. confers discretionary authority to the court at any stage of enquiry, trial or other proceeding to summon any person as a witness and examine him. Since the trial court did not find it necessary to examine the witnesses whom the informant wants to examine, no illegality can



be found with the order.

10. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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