

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9997 of 2018

Arising Out of PS.Case No. -46 Year- 2006 Thana -AURANGABAD COMPLAINT CASE District-
AURANGABAD

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Ranju Devi daughter of Bechan Sao, resident of Kanker, P.S.- Navinagar, District-
Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. Manoj Kumar Gupta, son of Vijay Prasad Gupta
3. Vijay Prasad Gupta son of Parmeshwar Sao
4. Gangia Devi wife of Vijay Prasad Gupta
5. Sunil Kumar Gupta son of Vijay Prasad Gupta
6. Blndhyachali Devi wife of Sunil Kumar Gupta
7. Shiv Prasad Gupta son of not Known to the Petitioner, resident of Kabul, P.S.-
Chatarpur, District- Palamu, Jharkhand.

All are resident of Navanagar Nigahi, P.S.- Singrauli, Madhya Pradesh.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Brajesh Kumar, Advocate
For the State : Smt. Pushpa Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-08-2018

This application under Section 482 of the Code of Criminal
Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for
quashing the order dated 29.11.2017 passed in Complaint Case
No.C46 of 2006 by which the learned Sub Divisional Judicial
Magistrate, Aurangabad has dismissed the petition filed by the
complainant on 18.04.2017.

2. The petitioner is complainant of Complaint Case No.46
of 2006 in which charge, *inter alia*, under Section 498A of the Indian



Penal Code has been framed. She was examined on 18.07.2018 before charge and on 20.07.2009 after charge. Similarly, witness no.2 was examined after charge on 03.04.2010. The evidence on behalf of the complainant after charge was closed on 07.11.2013. Thereafter, on 02.04.2014 statement of the accused were recorded under Section 313 of the Cr.P.C. and the case was adjourned for defence to produce its witness. The defence produced two witnesses in order to prove their innocence during trial whereafter, on 29.07.2016, the defence case was also closed. Since then, the case was kept pending for argument. It was only on 18.04.2017, an application was filed by the complainant for her recall and recall of witness no.2 Bochan Sah for further examination.

3. It was pleaded on behalf of the complainant that due to inadvertence of the lawyer conducting the case certain important documents could not be exhibited which were essential for proper adjudication of the case.

4. The prayer made on behalf of the complainant in her application under Section 311 of the Cr.P.C. was contested by the accused persons. It is pleaded on their behalf that nine years have elapsed since the date of filing of the complaint. The witnesses examined during trial have deposed at length and after cross-examination they were discharged. Their evidence was recorded more



than seven years ago and, thereafter, the defence had also adduced its evidence and the defence case was also closed. It was further contended that the application under Section 311 of the Cr.P.C. cannot be allowed for filling up lacuna of the prosecution case.

5. Having heard both the parties, the learned Sub Divisional Judicial Magistrate, Aurangabad, vide impugned order dated 29.11.2017 rejected the prayer of the petitioner and directed her to argue the case on merit.

6. Being aggrieved by the aforesaid order dated 29.11.2017, passed by learned Sub Divisional Judicial Magistrate, Aurangabad, the instant application has been filed by the petitioner under Section 482 of the Cr.P.C.

7. It is contended by the learned counsel for the petitioner that the learned Sub Divisional Judicial Magistrate, Aurangabad has failed to consider the fact that some important documents having bearing on merits of the case could not be marked due to inadvertence of lawyer conducting the case. It is further contended that merely because certain witnesses were already examined on behalf of the defence, the court below should not have rejected the application preferred by the petitioner under Section 311 of the Cr.P.C.

8. I have heard learned counsel petitioner and carefully perused the record.



9. The application filed in the court of Sub Divisional Judicial Magistrate, Aurangabad, has been brought on record as annexure-2 to the present application. From perusal of the application, I find that the pleadings are quite vague. Neither the provision of law under which the application was filed by the petitioner was mentioned nor it has been averred as to which document could not be proved during trial. The powers conferred under Section 91 of the Cr.P.C for summoning of documents are enabling in nature, aimed at arming the court or any other officer-in-charge of a police station concerned, to enforce and to ensure the production of any document or other things, necessary or desirable for the purpose of any investigation, inquiry, trial or other proceedings under the Cr.P.C., by issuing a summons or a written order to those in possession of such material. As far as Section 311 of the Cr.P.C. is concerned, the same enables the court to summon any person as a witness or examine any person in attendance, though not summoned as a witness, in order to find out truth to render just decision of the case. If exigency of the situation arises that there is requirement to recall any witness, it is true that the stage at which the case is pending would be of no consequence. However, in the instant case, since a vague petition was filed by the petitioner, in the opinion of this Court, the learned Magistrate committed no error in rejecting the same specially when the complaint case is pending



before the court since 2006.

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

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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