

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.63154 of 2018

In

Criminal Miscellaneous No.21223 of 2018

Arising Out of PS. Case No.- Year- Thana- District- Madhubani

Ramchandra Das, S/o Late Rajendra Das R/o Basbaria, P.S. Saharghat,
District- Madhubani.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ram Shankar Das, Adv.

For the Opposite Party/s : Mr. Sri Humayou Ahmad Khan

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 28-11-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for restoration of Cr.Misc. No. 21223 of 2018, which was dismissed for want of prosecution on 30.08.2018.

3. Learned counsel for the petitioner submitted that since he was out of Patna due to some urgent work, he could not attend the Court on 30.08.2018. He submitted that the absence of the petitioner was neither deliberate nor willful rather the same occurred due to unavoidable and compelling reasons.

4. On the facts and under the circumstances, the prayer is allowed. Cr.Misc. No. 21223 of 2018 is restored to its



original file.

Cr.Misc. No 21223 of 2018

Heard Mr. Ram Shankar Das, learned counsel for the petitioner.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioner for quashing the order dated 13.02.2018 passed by the learned Fast Track Court No.II, Madhubani in Sessions Trial No. 496 of 2010/90 of 2017 by which the prayer of the petitioner for calling for certain original records in order to mark them as exhibit was rejected.

3. Learned counsel for the petitioner submitted that the petitioner had filed an application under Section 311 of the Cr.P.C before the trial court and had prayed for summoning of voter list and certain other documents and marking the same as exhibit, but the prayer was rejected by the court below without appreciating the facts and law. He contended that those documents were essential for just decision of the case and, hence, the court below ought to have summoned them and marked them as exhibits.

4. On the other hand, learned counsel appearing for the State submitted that Section 311 of the Cr.P.C does not



provide for summoning of any record. Since the application itself was filed by the petitioner under wrong provision of law the same has rightly been rejected. He contended that even otherwise there was no reason as to why the documents so desired by the petitioner should have been summoned for being marked as exhibits. He pleaded that the application was filed by the petitioner at a belated stage when the defence evidence itself was closed just in order to delay the trial of the case and, therefore, no error can be found with the order impugned.

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

6. Section 311 of the Cr.P.C provides that any Court at any stage of any inquiry, trial or other proceeding under the Code of Criminal Procedure may, 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. In order to enable the court to find out the truth to render just decision, the provisions of Section 311 of the Cr.P.C are enacted wherein the court has been given discretionary



authority at any stage of inquiry, trial or other proceeding.

8. It is true that the said provision is not meant for summoning of any document, but merely because an application is filed under a wrong provision of law, the same is not required to be dismissed.

9. A document can only be summoned by the court in exercise of its power conferred under Section 91 of the Cr.P.C. The power conferred under Section 91 of the Cr.P.C is of enabling nature aimed at arming the court to ensure and enforce production of any document or other thing necessary for the purposes of investigation, inquiry or trial by issuing a summon or a written order to those in possession of such document.

10. In the instant case, the application filed by the petitioner before the trial court has been brought on record and marked as annexures to this application. From perusal of the same, it would appear that nothing has been stated as to why the documents so desired by the petitioner to be exhibited were essential for the just decision of the case. Further, the application was filed by the petitioner when the case was fixed for argument. Thus, not only the application was filed under a wrong provision of law but there was also no merit in the application of the petitioner.



11. In that view of the matter, I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

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