

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.27132 of 2019**

Arising Out of PS. Case No.-32 Year-1999 Thana- RIVILGANJ District- Saran

=====

ASHOK PRASAD Son of Sukdeo Prasad Resident of Godua, P.S.- Revelganj,  
Distt – Saran

..... Petitioner/s  
Versus

1. The State of Bihar.
2. Dr. Arun Kumar Barnwal, Professor and Head of Department, Department of Surgery. Patliputra Medical Collage, Dhanbad , (Jharkhand)

... .. Opposite Party/s

=====

**Appearance :**

For the Petitioner/s : Mr.Mrityunjay Kumar Tiwary, Advocate  
For the Opposite Party/s : Mr.Zainul Abedin

=====

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL**  
**ORAL JUDGMENT**

**Date : 16-05-2019**

1. Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 02.11.2018 passed by the learned F.T.C.-I, Chapra in Sessions Trial No. 292 of 2002, whereby learned lower Court rejected the petitioner dated 14.9.2018 filed by the prosecution u/s 311 Cr.P.C. for summoning the doctor in the case.

3. Factual matrix of the case is that Sessions Trial No. 292 of 2002 was initiated from Revelganj P.S. Case No. 32 of 1999 instituted for the offence under Section 147,148,149,447,341, 323,307 of the Indian Penal Code against the petitioner and other



accused persons on the basis of fardbeyan of Ashok Prasad. After framing of charge the witnesses were examined by the prosecution and finally the prosecution evidence was closed by the learned trial Court on 20.12.2017. Subsequently prosecution filed petition dated 14.09.2018 under Section 311 Cr.P.C. for summoning doctor of the case with the submission that despite sending summons doctor did not appear to depose in the case rather is demanding Rs. 10,000/- to depose. Prosecution had earlier filed petition dated 17.11.2017 to the said effect in the Court below, but its evidence was closed on 20.12.2017. After hearing the parties on the aforesaid petition filed under Section 311 Cr.P.C. it was rejected by the learned trial Court vide impugned order dated 02.11.2018.

4. It is submitted by the learned counsel for the petitioner that the case under hand has been instituted under Section 307 I.P.C. besides other allied Sections of I.P.C. Altogether 4-5 persons have sustained injuries by means of sharp edged weapon in the occurrence, some of which are grievous in nature and in such situation the examination of doctor is necessary but doctor intentionally is not appearing before the Court despite service of summons on him rather is demanding Rs. 10,000/- to give statement before the Court. The prosecution had filed petition on 17.11.2017 before the trial Court to the aforesaid effect but



despite the aforesaid petition the prosecution evidence was closed on 20.12.2017. The prosecution again filed petition dated 14.9.2018 under Section 311 Cr.P.C. for summoning aforesaid doctor, but its petition was also rejected by learned trial Court by impugned order dated 02.11.2018. As the case under hand has been instituted for the offence under Section 307 I.P.C. and there are injuries on the person of the victims and some of which are grievous in nature, the examination of doctor is necessary for just and proper adjudication of the case.

5. On the other hand, learned A.P.P. opposed the aforesaid prayer of the petition.

6. From perusal of the record, it appears that the case under hand has been instituted under Section 307 I.P.C. besides other allied Sections of I.P.C. and as per submission of the petitioner 4-5 persons have sustained injuries by means of sharp edged weapons at the hands of the accused persons, some of which are grievous in nature. Doctor concerned had examined the victims of the case and had given injury report and for examination of doctor and establishing aforesaid injury report prosecution has filed petition for summoning the doctor under Section 311 Cr.P.C. with the case that the aforesaid doctor is not appearing before the Court despite service of summons rather is demanding



Rs.10,000/- for giving deposition before the Court. The prosecution had filed petition to the aforesaid effect before the learned trial Court on 17.11.2017, but prosecution evidence has closed by learned lower Court. Prosecution again filed petition u/s 311 Cr.P.C. on 14.9.2018 for summoning the aforesaid doctor but the learned trial Court rejected the aforesaid petition of the prosecution only on the ground that the said petition has been filed only to delay the disposal of the case. Though the case is way back in the year 1999 and is at the verge of conclusion but in the aforesaid facts and circumstances of the case and interest of justice, I find the examination of doctor essential for just disposal of the case. Justice should be done after hearing and giving proper opportunity to the parties and injustice should not be done by shutting down the opportunity merely on the ground of delay in disposal of the case. Though it is an adage that justice delayed is justice denied but at the same time there is an adage that justice hurried is justice buried.

7. In the facts and circumstances of the case and in the interest of justice, the aforesaid order passed by the learned trial Court is quashed and the case is remitted back to the learned trial Court to pass afresh order in view of the observation made by this Court hereinabove.



8. Accordingly, this petition is allowed.

**(Prakash Chandra Jaiswal, J)**

T.Kr./-

|                   |           |
|-------------------|-----------|
| AFR/NAFR          | AFR       |
| CAV DATE          | NA        |
| Uploading Date    | 20.5.2019 |
| Transmission Date | 20.5.2019 |

