

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47342 of 2016

Arising Out of PS. Case No.-1353 Year-2004 Thana- ROHTAS COMPLAINT CASE
District- Rohtas

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Dineshwar Sah son of Late Satya Narayan Sah. Resident of Village- Sonhar,
P.O.- Dhanwa, P.S.- Shivsagar, District- Rohtas.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Radha Sah son of Late Bhikhari Sah
3. Rajesh Sah son of Late Bhikhari Sah
4. Gaya Sah son of Late Basropan Sah
5. Vijay Sah son of Gaya Sah. All are resident of Village- Son Nahar, P.O.-
Dhanua, P.S.- Sheo Sagar, District- Rohtas.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Ataul Haque, Advocate
For the Opposite Party/s : Mr. Shyam Kumar Singh, A.P.P.-138

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 07-08-2019

Heard learned counsel for the parties.

2. Petitioner is complainant of Complaint Case No.1353 of 2004, wherein cognizance was taken for the offences under Sections 379, 323, 427, 147 and 148 of the Indian Penal Code.

3. Petitioner had filed a petition under Section 309 of the Code of Criminal Procedure before the court below. However, without passing any order on the said petition, the court below has recorded the statement of the accused under



Section 313 of the Code of Criminal Procedure by the impugned order dated 25.05.2016.

4. The petitioner challenged the aforesaid order of the learned Magistrate before the learned Sessions Judge, Rohtas in Criminal Revision No.193 of 2016 and by order dated 27.07.2016, the revision application was dismissed.

5. The order of the revisional court reveals that since the petitioner could not bring evidence after charge, further opportunity of evidence was already closed on 21.01.2016 and 25.05.2016 was fixed for statement of the accused. On 25.05.2016, a petition under Section 309 of the Code of Criminal Procedure was filed and the impugned order was passed. The revision application was dismissed for the reason that impugned order passed by the learned trial court on 25.05.2016 was an interlocutory order. Hence, criminal revision was not maintainable.

6. The petitioner has not produced a copy of the petition filed under Section 309 of the Code of Criminal Procedure.

7. Submission of the learned counsel for the petitioner is that it was the duty of the trial court to ensure appearance of all the prosecution witnesses who were examined before charge. The



court below did not take the steps according to law and in casual manner recorded the statement of the accused persons without giving opportunity of cross examination of the witnesses, after charge.

8. The law does not require or mandate, a court to call for the witnesses who were examined before charge in a complaint case. Section 246 of the Code of Criminal Procedure relates to framing of the charge against the accused. Sub-section (4) of Section 246 of the Code of Criminal Procedure provides that if the accused refuses to plead guilty, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3), he shall be required to state, at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution whose evidence has been taken. Sub-section (5) provides that if he says he does so wish, the witnesses named by him shall be recalled and, after cross-examination and re-examination (if any), they shall also be discharged. Sub-section (6) says that the evidence of any remaining witnesses for the prosecution shall next be taken and after cross-examination and re-examination (if any), they shall also be discharged.



9. Apparently, the law requires that the Court will ask the accused, whether they opt to further cross-examine the witnesses already examined. If they so wishes, the witnesses would be recalled.

10. The record does not show that accused had expressed such desire before the court. Moreover, in the aforesaid circumstances, prejudice would be to the accused and not to the complainant. Therefore, I do not find any infirmity with the impugned order passed by the courts below. Hence, this application is *dismissed* as devoid of any merit.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
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