

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.354 of 2018

Arising Out of PS. Case No.-160 Year-2012 Thana- RAJPUR District- Buxar

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Bachu Lal Ram Son of Raju Ram resident of village Bhalua, P.S. Rajpur,
District Buxar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Aaxeey Lal Ram son of Shyam Bihari Ram resident of village Bhalua, P.S.
Rajpur, District Buxar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Sada Nand Roy, Advocate

For the Opposite Party/s : Mr. Tarkeshwar Nath Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 17-09-2019

Heard learned counsel for the parties.

2. Petitioner is accused in connection with Sessions
Trial No.293 of 2012, arising out of Rajpur P.S. Case No.160 of
2012, wherein trial is going on for offences under Sections
147/148/149/307/302 of the Indian Penal Code as well as
Section 27 of the Arms Act.

3. The petitioner filed a petition under Section 311
Cr.P.C. on 19.01.2016 stating therein that PW1 who was
examined on 30.09.2013 could not be cross-examined as learned
counsel for the petitioner was not available in Court to cross-
examine the witness. Hence, for substantial justice prayer be
allowed.

4. By the impugned order dated 19.02.2016 prayer



has been turned down on the ground that no such step was taken by the petitioner prior to examination of nine other prosecution witnesses and till closure of the prosecution evidence. Moreover, for rebuttal of the evidence of PWs 2 to 10 cross-examination of PW 1 cannot be allowed. Moreover, the prayer was made at a very belated stage.

5. Submission of learned counsel for the petitioner is that while considering prayer under Section 311 Cr.P.C. the only thing which the trial-Court has to see is whether the cross-examination of the witness already examined is essential to the just decision of the case. Other grounds of refusal are ignorable for the simple reason that prayer under Section 311 Cr.P.C. can be made at any stage of any inquiry or trial or other proceeding under the Code.

6. In a criminal trial especially trial relating to an offence of murder non-examination of any prosecution witness by the accused would cause serious prejudice to the accused and for substantial justice in the case prayer for cross-examination should have been allowed especially in view of the facts that PW 1 was not cross-examined at all. The delay in prayer could have been compensated in terms of cost payable to the witness.

7. Hence, in my view, if the impugned order would



not be set aside it would occasion miscarriage of justice. Therefore, impugned order is set aside and prayer for recall of PW 1 is allowed subject to payment of cost of Rs.6,000/- (Six thousand) payable to the witness concerned. The cost must be deposited within two weeks and thereafter the witness shall be recalled by the Court-below and entire exercise of cross-examination be completed within a week of appearance of the witnesses.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
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