

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44992 of 2019

Arising Out of PS. Case No.-123 Year-2007 Thana- FATEHPUR District- Gaya

1. Sheetal Yadav Son of Late Khago Yadav
2. Basudev Yadav Son of Late Khago Yadav
3. Jagdish Yadav Son of Late Khago Yadav
4. Balveer Yadav Son of Basudev Yadav
5. Dinesh Yadav Son of Basudev Yadav
6. Surendra Yadav Son of Sheetal Yadav
7. Umesh Yadav Son of Sheetal Yadav

All are Residents of Village - Halim Chak, P.S.- Fatehpur, District- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pravin Chandra Prasad, Advocate

For the Opposite Party/s : Mr. Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date : 16-09-2019

Heard learned counsel for the parties.

2. The petitioners are accused in connection with Fatehpur P.S. Case No.123 of 2007 registered for offences under Sections 147/148/149/323/324/325/307 of the Indian Penal Code. Sessions Trial No.212 of 2017, arising out of the aforesaid police case was going on before the learned F.T.C. No.II, Gaya. The prosecution at the very inception examined the Investigating Officer of the case as PW 1. Thereafter, witnesses of the occurrence were examined and the accused



noticed several contradictions in the statement of witnesses of the occurrence to that of the statement made before the police under Section 161 Cr.P.C.

3. For the aforesaid reason the petitioners filed an application under Section 311 Cr.P.C. for recall of PW1 Mr. Satnarayan Ram, the Investigating Officer of the case, for further cross-examination to draw his attention about the statement of the witnesses which were not made before the police, and for the first time made before the Court.

4. By the impugned order dated 04.04.2019 the prayer has been declined only for the reason that attention of some of the prosecution witnesses towards their previous statement before the police under Section 161 Cr.P.C. was not drawn whereas in the statement of one of the prosecution witnesses (PW 3) it was found that the contradiction was minor one. Moreover, the application under Section 311 Cr.P.C. was made after a long delay. Hence, the prayer was refused. Section 311 Cr.P.C. reads as follows:

*“Section 311. Power to summon
material witness, or examine person present.-
Any court may, at any stage of any inquiry,
trial or other proceeding under this Code,*



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.”

5. A bare perusal of the provision aforesaid makes it clear that the witnesses can be summoned under this section at any stage of the inquiry or trial or other proceeding under the Code and the witnesses already examined may also be re-called under this section for re-examination if his evidence appears to the Court to be essential to the just decision of the case.

6. The grounds for recall of the Investigating Officer was to draw attention of the Investigating Officer to the statement of the witnesses of the occurrence made in Court and not made before the police. Thus, further cross-examination of PW 1 was essential for just decision of the case for the accused as well as prosecution because the Investigating Officer would get opportunity to explain the statement before the Court and made before him under Section 161 Cr.P.C. The Investigating



Officer may explain that such statement was not made before him by the witness concerned or may depose before the Court that identical statement made in some other words available in the case-diary. The Court-below has not examined this aspect that recall of PW 1 under Section 311 Cr.P.C. would not be essential to the just decision of the case. Hence, the impugned order suffers from non-compliance of the requirement of law as well. Hence, the same stands quashed and the matter is remitted back before the Court-below to pass order according to law.

(Birendra Kumar, J)

Mkr./-

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