

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.103 of 2016

Arising Out of PS. Case No.-34 Year-2002 Thana- CHAKAI District- Jamui

Prakash Yadav son of Sahdeo Yadav, grand son of Late Mathura Yadav,
resident of village Kanni, P.S. Chakai, District Jamui

... .. Petitioner

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Petitioner/s : Mr.Pankaj Kumar Sinha
For the Respondent/s : Mr.Parmanand Pd.App

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 22-04-2019 This revision application has been filed for setting aside the order dated 23.09.2015 passed by the Sessions Judge-II, Jamui in Sessions Trial No.229 of 2011, by which the petition, filed under Section 311 of the Cr.P.C. by prosecution for examination of the Investigating Officer and the Doctor, has been dismissed.

The grounds for assailing the order is that no summon or bailable warrant were issued against the Doctor and the I.O. and for the first time, the summon was issued on 25.9.2014 and without getting for the service report, the case has been closed and the case is under Section 307 of the IPC, as such evidence of the Doctor and the I.O. is essential for just decision of the case.

On the other hand, the learned O.P.no.2 has submitted



that the case is of the year, 2002 and the last witnesses have been examined on 10.5.2012 and thereafter much opportunities have been given to examine the I.O. and the Doctor but in spite of that they could not examined the Doctor and the I.O. and as such the prosecution case is closed, hence there is no illegality or irregularity in the impugned order dismissing the petition under Section 311 of the Cr.P.C.

Heard learned A.P.P.

Having heard both sides and on perusal of record that notice has been issued to the Doctor and the I.O. and that too on 25.9.2014 and without waiting for any compliance of the same, the case has been closed on 18.5.2015 and the case is under Section 307 of the IPC, for which the examination of the Doctor and the I.O. appears to be essential. However, learned Trial Court without considering the same, dismissed the petition under Section 311 of Cr.P.C. filed by the prosecution by the impugned order.

Considering the aforesaid facts and circumstances, the impugned order dated 23.09.2015 does not appear to be sustainable.

In such view of the matter, the impugned order is set aside and the matter is remitted back to the court below to



provide an opportunity to the prosecution to examine the Doctor and the I.O. within a period of four months from the date of receipt of the order and failure on the part of the prosecution to examine the Doctor and the I.O. within the aforesaid period, the learned court below is at discretion to close the case of the prosecution again.

With the aforesaid observation, this revision application is allowed.

(Vinod Kumar Sinha, J)

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