

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59767 of 2019

Arising Out of PS. Case No.-62 Year-2012 Thana- SAHPUR District- Patna

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AJAY KUMAR SINGH, Son of Sri Upendar Singh, Resident of Village -
Ashopur, P.S. - Danapur, District - Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Pathak, Advocate

For the Opposite Party/s : Mr. Shyam Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 17-10-2019

Heard learned counsel for the parties.

2. This application, under Section 482 Cr.P.C., is for quashment of order dated 05.08.2019 passed by the learned Judicial Magistrate, 1st Class, Danapur in connection with Shahpur P.S. Case No. 62 of 2012, a case under Section 25(1-b)a and 26 of the Arms Act whereby the learned Magistrate has allowed the prayer of the prosecution to examine charge-sheet witnesses in exercise of power under Section 311 Cr.P.C.

3. The petitioner is accused in the case. The impugned order has been challenged on the ground that prosecution evidence was closed on 28.02.2018 after exhausting the entire processes for procuring attendance of the witnesses and only on failure of the prosecution to produce any evidence. The charges were framed in the case on 23.08.2016 and for two years the prosecution did not



produce any evidence. Hence, the court below should not have allowed the prayer of the prosecution only to fill-up the lacuna in the case.

4. Learned counsel for the petitioner has placed reliance on the judgment of this Court in Keshav Choudhary Versus State of Bihar passed in Cr. Revision No. 401 of 1995 on 21st January, 2000 for his submission that the power under Section 311 Cr.P.C. cannot be exercised for filling up lacuna in the prosecution case. The power can be exercised only if the Court while hearing the case deems fit and proper to examine some witnesses for the ends of justice or to clarify any doubt in the mind of the Court.

5. The impugned order reveals that the learned court below found that none of the processes issued against the witnesses were ever served on any of the witnesses nor there was any service report on the record. Hence, for the ends of justice, the prosecution evidence was fit to be reopened under Section 311 Cr.P.C.

6. Section 311 Cr.P.C. reads as follows:-

“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.”

7. A perusal of the aforesaid provisions makes it amply clear that the Court is competent enough at any stage of the trial to summon and examine any witness even if already examined earlier if his evidence appears to be essential for the just decision of the case.

8. The court below was of the view which would be evident from the impugned order that no service of summon was affected to the prosecution witnesses. Hence, it was essential to give opportunity to the prosecution to know its case.

9. In the aforesaid factual position, I do not find any merit in the submission of learned counsel for the petitioner that after the impugned order a retrial would start. A retrial and allowing further prosecution evidence or re-examination and cross-examination of a witness during the trial are quite two



different things. The impugned order is not going to reopen a trial which has already concluded. Hence, in my view, the impugned order is not going to cause any prejudice to the accused or is going to cause any failure of justice. Hence, it requires no interference.

10. However, the prosecution (the State) through the District Magistrate concerned shall pay cost of rupees ten thousand to the accused persons for harassment caused to them in attending the case for such a long time even after framing of the charges. The cost shall be payable before start of prosecution evidence and preferably within two months from today.

11. With the aforesaid observation, this application stands disposed of.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
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