

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81547 of 2019

Arising Out of PS. Case No.-1690 Year-2013 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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JHINGRU SINGH Son of late Ratan Singh Resident of - Sachidanand Nagar,
Hawai Adda, P.S.- Tilka Manjhi (Kotwali), presently residing at Housing
Board Colony, P.S.- Barari (Kotwali), Distt - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dr. Binod Prasad Son of Unknown Presently Posted as Superintendent of
Jawahar Lal Nehru Medical College, Distt - Bhagalpur.
3. Dr. D.K. Ghosh Son of Unknown Jawaharlal Nehru Medical College and
Hospital Bhagalpur.
4. Dr. Kishore Kumar Sinha Son of Unknown Ex. Head of Pediatric
Department, Jawahar Lal Nehru Medical Colleges and Hospital, Bhagalpur.
5. Dr. Radha Krishna Sinha Son of Unknown Jawahar Lal Nehru Medical and
Hospital Bhagalpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Nirmal Kumar Sinha
For the Opposite Party/s : Mr.Shyam Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 24-01-2020 This application has been filed for quashing of the

order dated 26.03.2018 passed in Criminal Revision No.

160/2018 passed by learned 7th Additional District & Sessions

Judge, Bhagalpur, by which, he has rejected the criminal

revision filed by the petitioner and confirmed the order dated

08.08.2018 passed by ACJM -IX, Bhagalpur, rejecting the

petition filed by the complainant / petitioner under Section 311

Cr.P.C.

Case in short is that a complaint petition was filed by



the petitioner against accused persons for the offences punishable under Sections 304, 323, 324, 379, 504 and 506 of the Indian Penal Code, which has been numbered as Complaint Case No. 1690/2013 for causing death of daughter of the petitioner for negligent treatment.

After inquiry, finding a prima facie case under Sections 323 and 504 of the Indian Penal Code, learned Magistrate, issued processes against the accused persons i.e. opposite party nos. 2 to 5. Summary of accusation was explained to the opposite party nos. 2 to 5 and trial proceeded. It further appears from perusal of the record that on 21.08.2017, the complainant has filed an application for examination of one Fulmani Devi under Section 311 Cr.P.C., which was rejected by the learned Trial Court. Again, he has filed another petition under Section 311 Cr.P.C., which was dismissed as not pressed. Thereafter, the petitioner filed third petition under Section 311 Cr.P.C on 21.05.2018 to examine some witnesses but on endorsement that he wants to examine only Jhingru Singh, the application was accepted and Jhingru Singh was examined and cross examined and, thereafter, on submission of the complainant that he does not want to examine any further witness, the evidence of complainant was closed and the



statement of the accused under Section 313 Cr.P.C. was recorded. It further appears that thereafter, one more petition under Section 311 Cr.P.C. was filed for examination of the witnesses, with respect to them, earlier a petition was filed by the complainant for their examination and he forego their examination. However, that petition was also dismissed by the learned Trial Court. Thereafter, one more petition under Section 311 Cr.P.C has been filed stating that whatever has been deposed by the witnesses, the same has not been recorded properly but the said petitioner was also rejected by the learned Trial Court vide order dated 08.08.2018.

Against the aforesaid order dated 08.08.2018 passed by ACJM -IX, Bhagalpur, the petitioner preferred Criminal Revision No. 160 of 2018 before the learned Sessions Judge, Bhagalpur. Learned Sessions Judge, Bhagalpur, after hearing the parties dismissed the said revision application on the ground that conduct of the petitioner shows that he only wants to linger the matter this way or that way, which is against the spirit of provisions contained in Section 311 Cr.P.C.

Against the said orders passed by the learned Trial Court as well as the learned Sessions Judge, Bhagalpur, the petitioner has filed the present revision application.



Submission of learned counsel for the petitioner is that the learned Trial Court without considering the evidence of those witnesses, who are material witnesses and their examination was essential for just decision of the case, has rejected the petition filed by the petitioner only on the ground of causing delay and as such, the impugned order passed by the Revisional Court as well as Trial Court are against the provisions contained in Section 311 Cr.P.C. and the same are not sustainable.

Heard the parties and perused the materials available on record, from which, it appears that the petitioner is in habit of filing petitions under Section 311 Cr.P.C. one after another and it further appears that on the submission of the petitioner that he does not want to examine further witness, the evidence was closed and the statement of the witnesses was recorded but again he filed a petition for summoning some witnesses, which was rejected vide order dated 08.08.2018. Provisions of Section 311 Cr.P.C. was made in the Cr.P.C. when it appears to the court either on the plea or prosecution or defense that examination of some witnesses are required for just decision of the case and not only for filling up any omission in the prosecution case, the said provisions can be invoked at any point of time but what



appears in the present case is that the petitioner has used the provisions contained under Section 311 Cr.P.C. as a tool to delay the Trial, as he is repeatedly filing the petitions under Section 311 Cr.P.C. and from the petition dated 23.06.2018, it does not appear as to whether those witnesses were examined at the stage of enquiry or not. Apart from that the petitioner has already availed the revisional jurisdiction of the Sessions Judge and filing an application before this Court under Section 482 Cr.P.C amounts to filing second revision by way of the present quashing application. It is true that the provisions contained in Cr.P.C. does not bar any person to file an application under Section 482 Cr.P.C. but at the same time, the High Court should not act as a Revisional Court in the garb of inherent powers. The petitioner has already moved before the learned Sessions Judge against the order of Trial Court, which stood dismissed vide order dated 26.03.2019 and entertaining the second revision in the garb of present quashing application will only be an abuse of process of the court.

In view of the above discussions, I do not find any merit in the present application and the same is accordingly dismissed.

(Vinod Kumar Sinha, J)

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