

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86283 of 2019

Arising Out of PS. Case No.-188 Year-2002 Thana- BUDDHACOLONY District- Patna

MD. AFROZ @ AFROZ Son of Md. Nashim Resident of Mohallah- Dujra,
P.S.- Budha Colony, District- Patna.

... .. Petitioner/s

Versus

THE STATE OF BIHAR Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sri Krishna Ranjan

For the Opposite Party/s : Mr.Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 07-01-2020 This application has been filed for quashing of order dated 3.9.2019 passed in Cr. Revision No.386 of 2019 by the Addl. District and Sessions Judge XXI, Patna, who has confirmed the order dated 6.5.2019 passed by the ACJM XII, Patna in G.R.No.4670 of 2002 arising out of Buddha Colony P.S.Case No.188 of 2002 whereby petition dated 30.8.2018 filed under Section 311 of the Cr.P.C. has been rejected.

The case in short is that a case under Section 147, 448, 324, 325, 323, 379 of the IPC had been filed against the petitioner and other accused persons.

Cognizance has been taken after the charge sheet has been submitted and the case has been transferred to the file of ACJM-XII, Patna.

It further appears that during the trial, witnesses were



examined and P.W.4 was examined by the court on 29.5.2006 and the Doctor has been examined on 30.5.2006 . It further appears that evidence of P.W.5 was closed and later on a petition under Section 311 of the Cr.P.C. was filed by the petitioner to recall P.W.5. It further appears that the learned ACJM has rejected the aforesaid petition vide order dated 6.5.2019 against which the petitioner has preferred Revision Application that has also been dismissed vide order dated 3.9.2019 on the ground that it is *inter locutory* order.

Submission of the learned counsel for the petitioner is that he could not cross examine P.W.4 and he could also not cross examine P.W.5, as such for the ends of the justice, he wants to cross examine both witnesses.

Heard learned APP and perused the record. From perusal of the record it appears that both the witnesses have been examined in the year, 2006 and and the evidence of the P.W.5 has been closed as no one appears to cross examine as such it appears that sufficient opportunity has been given to the petitioner to cross examine the evidence and P.W.5 was discharged and prosecution evidence was closed on 4.7.2018, whereas petition under Section 311 of the Cr.P.C. for recall of P.W. 4 and 5 was filed on 24.10.2019 and the petition also does



not disclose as to on what points, defence wants to cross examine them. Even no explanation for non-appearance of counsel for defence to cross examine P.W. 5 has been mentioned. In view of the above, I find no merit in this application.

Accordingly, this application is dismissed.

(Vinod Kumar Sinha, J)

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