

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 12417 of 2021

Arising Out of PS. Case No.-80 Year-2010 Thana- SAHIYARA District- Sitamarhi

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1. Ram Babu Singh S/O- Late Ram Sakal Singh Resident of Village- Belahi Jairam, P.S.- Sahiyara, Distt- Sitamarhi.
 2. Shyam Babu Singh Son of Late Ram Sakal Singh Resident of Village- Belahi Jairam, P.S.- Sahiyara, Distt- Sitamarhi.
 3. Lalit Kumar Singh Son of Ram Babu Singh Resident of Village- Belahi Jairam, P.S.- Sahiyara, Distt- Sitamarhi.
 4. Rana Devesh Singh @ Rana Devesh @ Chotu Singh Son of Ram Babu Singh Resident of Village- Belahi Jairam, P.S.- Sahiyara, Distt- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Chandan Kumar Singh S/O Ram Binod Singh R/O village- Belahi Jairam, P.S.- Sahiyara, District- Sitamarhi

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Praveen, Adv.
For the Opposite Party/s	:	Mr. Jagdhar Prasad, APP
For the O.P. No. 2	:	Mr. Ashok kr. Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 30-11-2022

Heard learned counsel for the petitioners and learned A.P.P. for the State as well as learned counsel for the Opposite Party No.2.

The present quashing application is being filed for quashing the order dated 02.03.2020 passed by Sri Rakesh Kumar, learned J.M.-1st, Class, Sitamarhi in connection with Tr. No. 2006 of 2019 arising out of Sahiyara P.S. Case No.- 80 of 2010 lodged under Sections 447, 341, 323, 337, 504 and 34 of

the I.P.C. by which Court has allowed the application filed by prosecution under Section 311 of Cr.P.C.

Learned counsel for the petitioners submit that the present criminal case has been filed in the year 2010 in which charge sheet has been filed on 27.07.2011, cognizance has been taken on 06.08.2012, charge has been framed on 25.02.2013 against the petitioners. Counsel submits that he has annexed the order sheets by which it transpires that after 25.02.2013, series of dates were crossed but prosecution has failed to produce any witness. Counsel submits that after lapse of 6 years and issuance of processes, last date for adducing the evidence was fixed on 28.11.2019 and finally on 07.12.2019, the evidence was closed in this case. On 02.01.2020, the case has been fixed for examination of witnesses and examination of witnesses under Section 313 of Cr.P.C. has completed on 20.01.2020 (Annexure-3). Thereafter, an application under Section 311 of Cr.P.C. has been filed by the prosecution to allow the prosecution to examine the prosecution witnesses. The accused persons have opposed the petition filed under Section 311 by the prosecution and finally on 02.03.2020, the application filed by prosecution under Section 311 dated 20.01.2020 was allowed. Against the said order, the accused petitioners have preferred the present

quashing application rejecting the said order dated 02.03.2020 passed in G.R. No. 2336 of 2010 (State of Bihar Vs. Ram Babu Singh and Others). Counsel for the petitioners submit that the provisions laid down under Section 311 is very much clear under which Court may at any stage of inquiry, trial or other proceedings under this Court summon any person as a witness for 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. Counsel for the petitioners submit that there is no such occasion available to the prosecution of the present case as mentioned in Section 311. He put reliance on a judgment in case of ***Keshav Choudhary and Others Vs. State of Bihar*** reported in ***2000(3) P.L.J.R. 220*** decided on 21.01.2000, in which it has been held that Section 311 gives wide power to the Court to examine recall and re-examine any witness whose evidence is essential for just decision of the case but the jurisdiction conferred under Section 311 Cr.P.C. cannot be used for filling up of lacuna in the prosecution case and it does not give a long root to the prosecution to make it a tool for the harassment of the accused

or to be used or abuse in any manner.

Para 6 and 7 of the judgment are quoted here:

“It, thus, becomes clear that this provision u/s 311 of the Code has been made for the just decision of the case. A just decision in a case will mean just decision both from the point of view of the prosecution as well as the accused. Section 311 of the Code does not give a long rope to the prosecution to make it a tool for the harassment of the accused to be used or abused in any manner that they like. In the present case it, however, appears that the charge sheet in this case was submitted on 15.06.1993 and thereafter 24.06.1993, 25.06.1993, 26.06.1993 and 28.06.1993 were the dates fixed for the examination of the witnesses. In spite of so many dates not a single witness turned up. By the orders dated 03.02.1994, 11.01.1995 and 07.03.1995 bailable as also non-bailable warrants of arrest were issued against the witnesses. The warrants of arrest were issued through the Superintendent of Police,

Samastipur but in spite of these attempts made by the Court not a single witness turned up for his examination for more than two years. From the impugned order it appears that lastly only a formal witness was examined to prove the F.I.R. (Ext. 1). When in spite of non-bailable warrants of arrest not, a single witness could be produced before the learned trial Court it was left with no alternative but to close the case of the prosecution on 31.05.1995 and it proceeded to record the statements of the accused persons u/s 313 of the Code. Under the aforesaid circumstances, it is clear that the action of the prosecution as also of the police machinery can be said to be highly negligent and the prosecution singularly failed to produce any witness in spite of the non-bailable warrants of arrest issued against them. Under the aforesaid circumstances I do not think that the provision of Section 311 of the Code could be attracted. It is not one of those cases in which some important witnesses on the question of fact could not be

examined for any reason whatsoever. In the present case except for a formal witnesses not a single witness could be examined. It is only after the examination of the accused u/s 313 of the Code that the prosecution has come forward with a prayer to examine prosecution witnesses after waking up from the deep slumber. It is well-settled that the jurisdiction conferred u/s 311 of the Code cannot be used for filling up a lacuna in the prosecution case. The power u/s 311 of the Code can only be exercised if the Court while hearing the case deems fit and proper to examine some witnesses for the ends of justice, to appreciate the prosecution case and to clarify any doubt in his mind. This power cannot be exercised with the aid of the prosecutor this view finds support from the case of Rajendra Prasad Singh alias Khiru Singh v. Ramuchit Singh alias Chhotak Singh 1984 BBCJ 657.

Another thing is to be noted in this connection that by the impugned order the learned Additional Sessions Judge has recalled

his earlier order closing the case of the prosecution. It is well settled that a subordinate Courts have no jurisdiction to do so as held in the case of Bindeshwari Prasad Singh vs. Kali Singh. Hence, properly speaking the learned Additional Sessions Judge could not have recalled his earlier order closing the case of the prosecution and that also u/s 311 of the Code. As noted above the provision of this section are not attracted under the facts and circumstances of this case.”

Here in the present case which is squarely covered by virtue of the said statute and judgment, I am of the view that such opportunity may not be given to the prosecution to fulfill lacuna.

Learned counsel for the State and O.P. No. 2 opposes the prayer and submits that in the interest of justice, one opportunity may be given and as such, the order passed dated 02.03.2020 should be sustained.

After going through the entire records of the case, hearing the arguments on facts & law and after going through the citation mentioned by the counsel for petitioners, I am of the

view that enough opportunity was granted to the prosecution to produce his witness in such a petty case from 2013 to 2020 and in this view of the matter, the order dated 02.03.2020 passed by in is hereby set aside and the Trial Court is directed to proceed in the case and conclude the trial within 2 months from the date of communication of the present order.

In this view of the matter, the present quashing application is allowed.

(Dr. Anshuman, J.)

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