

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.507 of 2018

Arising Out of PS. Case No.-29 Year-1999 Thana- KURSAILA District- Katihar

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1. Asim Kumar, son of Brij Kishore Mandal
 2. Pinku Kumar Mandal, son of Dipnarayan Mandal. Both are residents of village Koskipur, P.S. Tikapatti, District Purnea.

... .. Petitioners

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner/s	:	Mr.Bhola Prasad, Advocate Mr. Mukesh Kumar Jha, Advocate
For the Respondent/s	:	Mr.Md. Fahimuddin, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 04-07-2022 Heard learned counsel for the petitioners and Mr.
Md. Fahimuddin, learned A.P.P. for the State.

Petitioners are aggrieved by and dissatisfied with the order dated 29.01.2018 passed by learned Judicial Magistrate 1st Class, Katihar. By the impugned order, the learned Magistrate has refused to allow the application under Section 311 Cr.P.C. filed on behalf of the accused-petitioners to direct recall of P.W.1 and P.W.2 who were examined long back on 04.05.2000.

Learned counsel for the petitioners submits that the accused-petitioners were represented through their lawyer and on that date the lawyer refused to cross-examine the two witnesses who were the constables and members of the patrolling party when the petitioners were allegedly arrested.



The lawyer refused to cross-examine P.W.1 and P.W.2 saying that they had no paper.

Learned counsel submits that the learned trial court could not appreciate that the non cross-examination of P.W.1 and P.W.2 may adversely affect the interest of the accused-petitioners hence, in the interest of justice those two witnesses were required to be recalled.

On the other hand, Mr. Md. Fahimuddin, learned A.P.P. for the State submits that the present case is about 23 years old. The prosecution witnesses were examined for over about two years after the examination of P.W.1 and P.W.2. It is submitted that from the certified copy of the deposition of P.W.6, it would appear that he was examined on 03.12.2002. He further submits that even in the year 2003, the prosecution witnesses were being examined. In the year 2018 when the case was fixed for final argument then only the application under Section 311 Cr.P.C. was filed just to delay the decision of the trial court. The accused-petitioners have in fact been successful in his efforts by way of the present application which has remained pending in this court for over four years.

Learned counsel submits that it is not the case of the petitioners that they had not engaged the learned counsel who



had not deemed it just and proper to cross-examine P.W.1 and P.W.2. It is his further submission that if by change of lawyer after about 20 years when the trial is on the verge of conclusion, such pleas are raised and allowed to be entertained, it will be used as a tool in the hand of the accused to delay the conclusion of trial.

It is lastly submitted that in this case the bonafides of the petitioners are totally lacking.

Having regard to the submissions noted hereinabove and the materials available on the record, this Court finds force in the submission of learned A.P.P. for the State. The case was registered in the year 1999 and P.W.1 and P.W.2 were examined on 04.05.2000, their cross-examination was refused by learned counsel representing the accused-petitioners.

In such circumstances, when the case was fixed for final argument after about 20 years, the present application was filed without there being any cogent and plausible reason to satisfy the conscience of the Court to allow the application under Section 311 Cr.P.C. Apparently, this has been used as a tool to delay the conclusion of trial and disposal of the matter.

This Court refuses to entertain this application for the reasons mentioned above.



It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

