

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.787 of 2017**

Arising Out of PS. Case No.-87 Year-2011 Thana- MAGADH MEDICAL COLLEGE  
District- Gaya

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1. Jitendra Sharma @ Jitendra Kumar S/o Late Praduman Sharma, R/o- Vill.- Urbisunpur, P.S.- Alipur, Dist.- Gaya.
  2. Nawal Sharma @ Nawal Kishore Sharma, S/o Late Paramadhan Sharma, R/o Vilage- Chainpur, P.O.- Ahiyapur, P.S. Konch, Distt.- Gaya.
  3. Uttam Sharma, W/o Jitendra Sharma, R/o - Vill- Urbisunpur, P.S.- Alipur, Dist.- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Saket Kumar, S/o Late Nawal Sharma alias Nawal Kishore Sharma.
3. Sushma Sharma.
4. Arti Kumar,  
Both Daughter of Nawal Sharma alias Nawal Kishore Sharma.
5. Ratan Devi, W/o Nawal Sharma alias Nawal Kishor Sharma,
6. Akhilesh Kumar Singh, S/o Late Bahadur Singh,  
All are resident of Village- Chainpur, P.S.- Ahiyapur, P.O- Koanch, District- Gaya.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Dinu Kumar, Adv.         |
|                      | : | Smt. Sangita Kumari, Adv.    |
| For the State        | : | Mr. Jagdhar Prasad, APP.     |
| For the O.P.         | : | Mr. Lalan Kumar, Adv.        |
|                      | : | Mr. Brij Bihari Tiwary, Adv. |

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**CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN**  
**ORAL JUDGMENT**

**Date : 19-04-2023**

Heard learned counsel for the petitioner and learned A.P.P. for the State as well as learned counsel for the opposite parties.

The present Cr. Revision Application has been filed to set-aside the order dated 07.06.2017 passed by A.D.J.-VI,



Gaya in Sessions Trial No. 63/15/289/15 arising out of Magadh Medical P.S. Case No. 87 of 2011 dated 27.09.2011 lodged under Sections 304(B), 498(A), 364, 120(B), 34, 201 of the Indian Penal Code read with Section 3/4 of Dowry Prohibition Act, subsequently Section 376 of Indian Penal Code has also been added in this case.

Learned counsel for the petitioner submits that in the F.I.R. itself, it has been submitted by the informant that on 16.09.2011 when he received information about this event, he filed a *Sanha* on which the said information was recorded by the Police bearing SDE No. 341 of 2011 dated 16.09.2011. He further submits that the statement of informant regarding said *Sanha* is one of the foundational fact of this case. He also submits that reasons best known to the I.O., the said *Sanha* has not been added as part of the charge sheet. Presently the case is running at the stage of evidence of the prosecution witness. Counsel has filed an application under Section 91 of the Cr.P.C. requesting to the court to call for the said SDE No. 341 of 2011 dated 16.09.2011 about which the categorical statement has come in the F.I.R. Learned counsel submits that it is not the document of the defence, rather it is one of the base document of the prosecution which are very fatal with a view to



ascertainment the truth of the case and, therefore, he has filed the application before the court but instead of calling the record, the observation of court is that he may call for those documents when his evidence after Section 313 of Cr.P.C. shall come. In this regard learned counsel submits that it is the document or defence not of the petitioner (accused), rather it is the material which is already available in the foundational document of the prosecution and in this regard indication is there in paragraph No. 74 of the case diary. In the above circumstances, learned counsel for the petitioner submits that those documents may be exhibited after calling on record.

Learned counsel for the State submits that evidence of petitioner is not going on, therefore, filing application by him may not be entertained.

Learned counsel for the opposite parties submits that every criminal case is of the prosecution, it is the duty of prosecution to prove the case and if any document prosecution does not want to place before the court, he cannot be persuaded to place the same.

Upon going through the submissions made by the parties and the documents, this Court is of the view that contention of prosecution is correct up to that extent that on the



basis of materials, the prosecution want to prove the case, petitioner cannot pressurize to call other evidences which is not on record but it is also important on the other hand that the petitioner is not putting pressure upon the prosecution to call the document, rather he is raising a point before the trial court with a view to ascertainment the truth showing that the calling document is one of the foundational fact of the base document mentioned in the F.I.R. itself, by virtue of which the court shall reach on the point and ascertain the truth because in the criminal case it is the duty of prosecution to prove the case beyond all reasonable doubts. Since the document demanded by the petitioner is the document of prosecution, therefore, this Court is of the view that for the purpose of proving the matter beyond all reasonable doubts or not, consideration of those documents are necessary.

In this view of the matter, the order dated 07.06.2017 passed by A.D.J.-VI, Gaya in Sessions Trial No. 63/15/289/15 arising out of Magadh Medical P.S. Case No. 87 of 2011 is hereby set-aside and the court of A.D.J.-VI, Gaya is directed to call the said *Sanha* bearing SDE No. 341 of 2011 which is part and parcel of the pleading of fardbeyan and place on record and then pursue the trial.



With this direction, the present Cr. Revision  
Application stands allowed.

**(Dr. Anshuman, J.)**

Ritik/-

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