

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76985 of 2018

Arising Out of PS. Case No.-118 Year-2009 Thana- BRAHMPUR District- Buxar

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Ram Asis Rai S/o Late Deo Narayan Rai, Resident of Village- Bahoranpur,
Police Station- Shahpur, District- Bhojpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Pramod Kumar

For the Opposite Party/s : Mr.Sri Jharkhandi Upadhyay

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 05-04-2023 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor.

The petitioner has prayed for quashing the order dated
24.01.2017 passed by 4th Additional Sessions Judge, Buxar is
Session Tr. No. 302/2009+30/12 arising out of
Brahampur(Nainijor) P.S. case no. 118/2009 whereby and
whereunder the learned Trial Court has been pleased to reject
the petition of petitioner filed under the provisions of Section
311 of the Code of Criminal Procedure.

Learned counsel for the petitioner submits that the
petitioner is facing trial in the case registered under section 302
of Indian Penal Code and one of the P.W. namely Phuleshwar
Devi could not be examined by his lawyer.

The learned counsel for the petitioner further submits



that he is ready to bear the cost of the witness.

The learned Additional Public Prosecutor submitted that the petition is *malafide* only to delay the trial. He further submits that though the defense counsel was present but he did not cross-examine the witness who is sought to be recalled.

I have heard the learned counsel for the parties. Though it is a fact that witness was not cross-examined by the learned counsel for the defense but for the failure on the part of the learned Advocate, the petitioner should not suffer.

When the petitioner is facing trial under Section 302, he should be given fair opportunity to defend himself by cross examining the witness. In the interest of justice, this application is allowed.

The witness, P.W.-1 is directed to be recalled and she will be allowed to cross-examined by the advocate for defense. This exercise must be completed within one month of the receipt/communication of a copy of this order in the Trial Court.

(Sandeep Kumar, J)

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