

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1091 of 2016

Arising Out of PS. Case No.-74 Year-2011 Thana- GAURICHAK District- Patna

Yogendra Saw S/o Late Jank Saw, Resident of Village- Angari, P.S. -
Gaurichak, District – Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Urmila Devi W/o Rabindra Sharma, Resident of Village - Andari, P.S.-
Gaunichok, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vijay Kumar Mishra, Advocate Mr. Shovendra Kumar, Advocate
For the State	:	Mr. Jagdhar Prasad, APP

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 04-04-2023

Heard learned counsel for the petitioner and learned
counsel for the State.

The present criminal revision has been filed against the
order dated 14.09.2016 passed in Sessions Trial No. 535 of 2012
in connection with Gaurichak P.S. Case No. 74 of 2011 dated
01.05.2011 under Section 302/34 of the I.P.C. whereby and
whereunder learned court below has rejected the petition dated
14.09.2016 stating that the defence side can not contradict the
statement recorded in case diary, however he may contradict the
present statement from the case diary.

Counsel for the petitioner submits that section 145 of the
Indian Evidence Act is very much clear on this issue and it
categorically states that:

Section 145. Cross-examination as to previous statements in writing.

“A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.”

Counsel for the State submits that there is no infirmity in the order passed by the trial court dt. 14.09.2016 (Annexure-1). Counsel further submits that the case diary is a document in which the materials relating to investigation has been collected by the investigating officials. It is not the material for the purpose of defence. Counsel further submits that as per the law, the materials which has been collected by the prosecution shall come on the record of the case through prosecution witness and the prosecution materials and then only right is vested under law upon the defence to put question by way of cross-examination, in the form it comes through the prosecution materials on the

record of the case. Counsel for the state further submits that the defence is not permitted to start putting question directly showing the case diary.

After going through the argument, records and position of law, Section 145 of the Indian Evidence Act is very much clear which empowers the defence to put cross-examination as to previous statements in writing, in the opinion of this court for the present case cross-examination as to previous statement is in writing does not mean the previous statement in writing written in the case diary rather the meaning of the word previous statement in writing means the writing which has come in the evidence of the prosecution witness and in this view of the matter, this court finds that there is no infirmity in the order dated 14.09.2016 and therefore, the order passed by the trial court is hereby affirmed and the present criminal revision is hereby dismissed.

It is made clear that dismissal of this petition shall not debar the petitioner to take cross-examination. It shall only debar the petitioner to cross-examination from the content of the case diary but he has still right to cross-examination of the statements in writing in the prosecution evidence.

With this view of the matter, the present Criminal

Revision application is hereby **dismissed**.

(Dr. Anshuman, J.)

Ravishankar/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	