

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.28 of 2023

Arising Out of PS. Case No.-18 Year-2018 Thana- DHOLBAJJA District- Bhagalpur

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Sujeet Kumar @ Sujit Kumar Son of Shankar Mandal, R/o Village- Naya Nand Gola, P.S.- Tikapatti, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Anshu Kumari D/o Gopish Mandal, R/o Village- Bhagwanpur, P.S.- Dholbajja, District- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anshuman Jaipuriyar, Adv.

For the Respondent/s : Mr. Mithlesh Kumar Khare, APP.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 24-03-2023

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

The present Cr. Revision Application has been filed against the order dated 21.11.2022 passed by learned Exclusive Special Judge (POCSO)-cum-7th Additional District & Sessions Judge, Bhagalpur in Dholbazaa P.S. Case No. 18 of 2018, G.R. No. 1974 of 2018 lodged under Section 493, 376, 498A, 313 of I.P.C. read with Section 4 of POCSO Act.

Learned counsel for the petitioner submits that his petition under Section 311 of Cr.P.C. filed by the accused has been rejected. He further submits that the case in which petitioner is accused is running at the stage of defence witness

and examination and statement of accused under Section 313 of Cr.P.C. has been recorded on 16.09.2022. On 21.11.2022 petitioner has filed a petition for his defence and to adduce three evidence, according to him those evidence are in his support which was rejected on the ground that examination of parents of victim and one relative of victim is not necessary for proper adjudication or for the ends of justice.

Learned counsel for the petitioner submits that petitioner shall not make any unnecessary delay. He need only one date on which all the three witnesses may be examined on one date or three consecutive dates may be given, so that all the witnesses may be examined on three dates.

The present case is admittedly Sessions Triable case. The provisions of conducting session trial has been discussed in Chapter XVIII, Section 233 of Cr.P.C. which talks about entering upon defence, in which, it has been discussed that where the accused is not acquitted under Section 232 of Cr.P.C. then he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. Here in the present case there is no restriction casted upon the accused persons that who shall be his witness in defence.

It is also made clear under Section 233(3) of Cr.P.C. that if the accused applies for the issue of any process for compelling the attendance of any witness then the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that is made for the purpose of vexation or delay or for defeating the ends of justice. Here in the present case no such finding has come from the Trial Court that refusal of prayer for issuance of summons to the named accused persons has been made for the purpose of vexation or delay or for defeating the ends of justice.

In this view of the matter, the Trial Court is duty bound to issue the process for adducing any evidence which the accused may have in support thereof.

In this view of the matter, the order dated 21.11.2022 passed by learned Exclusive Special Judge (POCSO)-cum-7th Additional District & Sessions Judge, Bhagalpur in Dholbazaa P.S. Case No. 18 of 2018, G.R. No. 1974 of 2018 is hereby set-aside.

The Trial Court is directed to issue summons to all the three witnesses fixing different dates for different witnesses and if on the said date delay shall be caused by the

petitioner in any manner, the Trial Court shall proceed.

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

(Dr. Anshuman, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	