

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28966 of 2016

Arising Out of PS. Case No.-49 Year-2001 Thana- BEGUSARAI TOWN District- Begusarai

Sarita Kumari Daughter of Late Chandradeo Sah, Resident of Village-
Ratanpur, P.S. - Nagar, District- Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Raj Kumar Sah,
3. Jitendra Sah, null null
4. Dharmendra Sah All are sons of Late Bishwanath Sah, Resident of Village-
Ratanpur, P.S- Nagar, District- Begusarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate Ms. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate
For the State	:	Mr. Upendra Kumar, APP
For the Opposite Party No.2 to 4 :	:	Mr. Sandip Kumar Gautam, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

9 18-10-2024 The present petition has been preferred by the

Petitioner under Section 482 of the Cr.PC for quashing and

setting aside the order dated 19.05.2016 whereby the prayer of

the Petitioner for recalling the prosecution witness no.2, Priya

Ranjan Gupta has been registered.

2. Heard learned counsel for the Petitioner, learned

APP for the State and learned counsel for the Opposite Party

No.2 to 4.

3. Learned counsel for the Petitioner submits that the

alleged offence is serious in nature, punishable under Sections



307, 447 and 323 read with Section 34 of the Indian Penal Code.

However, learned Trial Court has closed the evidence of P.W.-2 without completion of his cross-examination. Moreover, learned Trial Court did not issue summons to rest prosecution witnesses including the Doctor and the Investigation Officer. He also submits that P.W.-2 could not turn up for further cross-examination on account of his mother suffering from cancer and he was busy in her treatment and even otherwise, other witnesses were required to be summoned for their evidence, but learned Trial Court has not taken any step to summon the other witnesses. The evidence of the prosecution has been closed only after examination of only one private witness despite the fact that the alleged offence is serious in nature.

4. However, learned APP for the State and learned counsel for the Opposite Party No.2 to 4 defend the impugned order whereby evidence of the prosecution has been closed.

5. Perused the material on record and considered the submissions advanced by both the parties I find that on *fardbeyan* of the Petitioner, Town P.S. Case No. 49 of 2001 was registered against five accused persons and after investigation, charge-sheet was also submitted against them for the offence



punishable under Sections 307, 447 and 323 read with Section 34 of the Indian Penal Code. After framing of charge, trial commenced. But only one witness was completely examined and while P.W.-2 was being examined, he could not turn up for his cross-examination on account of illness of her mother. Hence, his evidence was closed. I further find that even after closure of evidence of P.W.-2, learned Trial Court has not taken any step affording any opportunity to the prosecution to examine rest witnesses. I further find that the closure of the prosecution evidence in such manner would be travesty of justice. All the prosecution witnesses have to be examined. If the prosecution fails to bring its witnesses on its own and prays the Court to issue processes to secure the attendance of its witnesses, the Court is duty bound to issue processes as permissible by the Cr.PC. The Court cannot close the prosecution evidence in the way the Court has done issuing summons and if they do not turn up, coercive measure by way of warrant may be issued by learned Trial Court.

6. Accordingly, present petition is allowed, setting aside the impugned order dated 19.05.2016 and learned Trial Court is directed to examine all the prosecution witnesses as cited in the charge-sheet, if the prosecution wants to examine all



of them.

(Jitendra Kumar, J.)

Chandan/
Ravishankar-

U		T	
---	--	---	--

