

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.397 of 2024

Arising Out of PS. Case No.-443 Year-2020 Thana- BIHPUR District- Bhagalpur

Shiv Balak Prasad S/O Late Binda Paswan R/O Village- Potahi, P.S- Punpun,
Distt.- Patna.

... .. Petitioner/S

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amit Srivastava, Sr. Adv. Mr. Manoj Kumar, Adv. Mr. Vikram Singh, Adv. Mr. Girish Pandey, Adv.
For the Respondent/s	:	Mr. Pranav Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL ORDER

6 20-09-2024 This revision petition has been preferred by the petitioners/accused persons being aggrieved with the Order dated 02.04.2024 passed by the learned Additional District and Sessions Judge-II, Nawgachia in S.T. No. 214 of 2021, whereby and whereunder the application preferred by the applicants/accused persons for summoning some the witnesses as a defense witness has been rejected.

2. Learned senior counsel for the petitioners submits that S.T. No. 214 of 2021 is going on against the petitioners/accused persons and prosecution evidence has been already been closed. He further submits that at the time of producing of defense witness an application for summoning some of the prosecution witnesses as defense witnesses who have not been examined by the prosecution, was filed by the



petitioners which was rejected by the learned Trial Court on the ground that they are not the material witnesses. According to the senior counsel since, the witnesses namely Jawahar Lal Yadav, Narmedeshwar Singh Chauhan, Nitil Kumar are the listed witnesses of the prosecution and they were not examined by the prosecution. Thus, there is no bar for examining them as defense witnesses. Therefore, it is prayed by the senior counsel that on this ground the impugned order is liable to be set aside. Thus, it is prayed by him that all the above-mentioned three witnesses were directed to be summoned as defense witness. He further submit that as of now, the FSL report is also available with the case diary. Therefore, the concerned I.O. be also directed to supply the said FSL report to the concerned Trial Court. With regard to the witness Dr. Krishna Gopal is concerned, it is submitted by the senior counsel that since this witness is already examined and cross-examined by both the parties therefore, liberty may be granted to the petitioner to make an application under Section 311 of Cr.P.C. for recalling the said witness for his further cross-examination.

3. Undisputedly, the witness Jawahar Lal Yadav, Narmedeshwar Singh Chauhan, Nitil Kumar were the listed witnesses of the prosecution and they were not examined by the



prosecution. Therefore, there is no bar to examine these witnesses as a defense witness as they were not examined by the prosecution, if the defense wants to examine those witnesses as a defense witness, the learned Trial Court ought to have allowed the application for examining those witnesses as a defense witness. Accordingly, the impugned order 02.04.2024 is set aside. The Trial Court is directed to summon the witnesses Jawahar Lal Yadav, Narmedeshwar Singh Chauhan and Nitil Kumar as a defense witness on deposition of the requisite by the defense.

4. Learned State counsel is also directed to inform the concerned I.O. to deposit the FSL report which has been already annexed with the case diary to the concerned Trial Court.

5. As prayed by the learned senior counsel of the petitioner liberty is also granted to make an application under Section 311 of Cr.P.C. for resummoning the examine prosecution witness Dr. Krishna Gopal for his further cross-examination.

6. With the above said observation, this revision petition is disposed of.

(Arvind Singh Chandel , J)

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