

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4409 of 2023**

Arising Out of PS. Case No.-5 Year-2012 Thana- SC/ST District- Buxar

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1. Geeta Mishra @ Geeta Prasad Mishra Son of Late Bikramaditya Mishra
 2. Sharda Devi, Wife of Geeta Mishra @ Geeta Prasad Mishra
 3. Arun Kumar Mishra, Son of Geeta Mishra @ Geeta Prasad Mishra
All Resident of Village-Khilafatpur, P.S.-Buxar (M), District-Buxar.

... .. Appellant

Versus

1. The State of Bihar
2. Kailash Ram, Son of Late Ram Bilash Ram, Resident of Village-Khilafatpur,
P.S.-Buxar (M), District-Buxar.

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Binod Kumar Singh, Advocate Mrs. Alka Singh, Advocate
For the Respondent/s	:	Ms. Usha Kumari 1, Spl.P.P.

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 25-01-2024

At the outset, it is submitted by learned Spl.P.P. that information in terms of order dated 14.12.2023 has already given but, despite of the same, the informant fails to join the present court proceedings.

2. The present appeal has been filed by the appellants for setting aside the order dated 26.06.2023 passed by learned Additional Sessions Judge-1-cum-Special Judge, SC/ST (POA) Act and Children Court, Buxar in SC/ST Case No.15 of 2014 whereby the trial court has rejected the petition filed under Section 311 of the Code of Criminal Procedure (for short



‘CrPC’) to recall PW-5, namely, Kailash Ram for further examination.

3. It would be apposite to reproduce the provision prescribed under Section 311 of the CrPC as under:-

“311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case”.

4. It appears from the perusal of the impugned order that the petition as aforesaid to recall PW-5 was dismissed by learned trial court on the ground that PW-5 (informant) has already examined in the year 2017, where the compromise petition was filed after six years. It further appears from the perusal of said order that on the point of compromise informant/PW-5 has already examined, where he specifically stated that his signature on compromise petition was taken fraudulently.

5. It is well settled that power to summon any person as a witness or examine any person in attendance, though



not summoned as a witness, or recall any person under Section 311 of the CrPC must be exercised judiciously with caution and for valid and strong reasons, as it was held in the matter of **Ratan Lal & Ors. vs. Prahlad Zakir Khan & Ors.** as reported in **AIR 2017 SC 5006.**

6. In view of above, I find that there is no infirmity in the order dated 26.06.2023 passed by learned Additional Sessions Judge-1-cum-Special Judge, SC/ST (POA) Act and Children Court, Buxar.

7. Accordingly, the present appeal is hereby dismissed.

8. However, if any party entered into any compromise to compound the offence, the same be taken note by learned trial court in accordance with law.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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