

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23445 of 2025

Arising Out of PS. Case No.-723 Year-2015 Thana- KATIHAR COMPLAINT CASE
District- Katihar

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1. Gopal Prasad Azad, Son of Late Munder Lal Poddar
 2. Neeraj Kumar Azad, Son of Sri Gopal Prasad Azad
 3. Rakesh Kumar Azad, Son of Sri Gopal Prasad Azad
 4. Deepak Kumar Azad, Son of Sri Gopal Prasad Azad
- All are resident of Mohalla-Naya Tola Phulwari, Ward No. 36, P.S.- Katihar Town, District- Katihar

... .. Petitioners

Versus

1. The State of Bihar
2. Mosmat Fulwati Devi, Wife of Late Radheshyam Yadav, Resident of Mohalla-Patel Chowk, P.S.- Katihar Town, Distt.- Katihar

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Raju Giri, Senior Advocate
Mr. Harsh Vardhan, Advocate
For the Opposite Party/s : Mr. Navin Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

2 03-07-2025 Heard learned counsel for the petitioners and

learned APP for the State.

2. The present petition has been preferred against

the order dated 08.10.2024 as passed by the learned

Additional District and Sessions Judge-IV, Katihar in Criminal

Revision No.68 of 2023, where the learned Additional

Sessions Judge failed to interfere with the impugned order as

passed by learned A.C.J.M., Katihar dated 02.05.2023,

wherein the learned Magistrate has allowed the petition of the



complainant preferred under Section 311 of the Code of Criminal Procedure (in short 'CrPC') in C.A. Case No.723 of 2015.

3. Mr. Raju Giri, learned senior counsel while arguing for the petitioners submitted that non-interference with impugned order of Magistrate dated 02.05.2023 through impugned order dated 08.10.2024 as passed by revisional court as mentioned aforesaid is amounting to allowing the complainant to fulfill the loopholes of prosecution case. It is also submitted that even during the Covid-19 Pandemic, there was provision to examine the witnesses through virtual mode. It is also submitted that on vague ground as to attend marriage, a petition under Section 311 of the CrPC was allowed and moreover, the reason of recalling of witnesses were not supplied through impugned orders. It is submitted that on all such scores, the impugned order is bad in the eyes of law and, therefore, the same be quashed/set aside.

4. It would be apposite to reproduce para-7 of the impugned order as passed in Criminal Revision No.68 of 2023, which is as under:-



“7. Heard both the parties the petition filed by the revisionist and rejoinder filed on behalf of opposite parties as well as order passed by Ld, ACJM-VI, Katihar, case record of the original case and material available on it. The learned A.C.J.M.-Katihar hold the case due to “CORONA” pandemic the complainant could not produce the witnesses and the petition filed on behalf of complainant is allowed. It is settled principle of law that matter should be decided on the merit of the case and ends of justice should not be suppressed due to procedural lacuna. The order which is passed by the Learned ACJM-VI, Katihar is correct there is no irregularity, illegality or impropriety in the order. Moreover, it is an an interlocutory order.”

5. From perusal of record and out of submissions, it transpires that this is a case of non-examination of witnesses. It is not a case where witnesses already examined and, thereafter, a petition under Section 311 of the CrPC was allowed for their recalling so as to create an occasion to raise the submission that witnesses have been called for to fulfill the loopholes of the case of prosecution. It is an admitted position that during Covid-19 Pandemic, the court work was hampered for couple of years and moreover the learned



Magistrate categorically directed to complainant to produce the witnesses within specified time and conclude the examination of witnesses on three next date of hearing. It appears that the petition under Section 311 of the CrPC was allowed with aforesaid conditions, which appears justified to secure the end of justice as criminal trial should not be suppressed due to procedural lacuna, to find out truth.

6. In view of aforesaid, this Court does not find any merit in present petition and, therefore, same stands dismissed.

7. However, the learned trial court is directed to conclude the examination of witnesses on three next dates as per condition imposed by it, preferably within next three months from the date of receiving of this order, failing which the learned trial court may proceed with matter in accordance with law.

(Chandra Shekhar Jha, J.)

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