

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.252 of 2023**

Arising Out of PS. Case No.-201 Year-2018 Thana- HISUWA District- Nawada

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Shailesh Kumar, Son of Govind Prasad R/o Panchugarh Hisua PS- Hisua and  
Dist- Nawada

... .. Petitioner/s

Versus

1. The State of Bihar
2. Varun Kumar, son of Jagdish Prasad Yadav R/o- Panchugarh Hisua Ps-  
Hisua Dist- Nawada
3. Purushottam Kumar, son of Jagdish Prasad Yadav R/o- Panchugarh Hisua  
Ps- Hisua Dist- Nawada
4. Dipak Kumar son of Jagdish Prasad Yadav R/o- Panchugarh Hisua Ps- Hisua  
Dist- Nawada
5. Jagdish Prasad not given R/o- Panchugarh Hisua Ps- Hisua Dist- Nawada

... .. Respondent/s

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**Appearance :**

|                        |   |                                                                                                        |
|------------------------|---|--------------------------------------------------------------------------------------------------------|
| For the Petitioner/s   | : | Mr. Devendra Kumar Sinha, Sr. Advocate<br>Ms. Shashi Bala Verma, Advocate<br>Mr. Madan Mohan, Advocate |
| For the Opposite Party | : | Mr. P. N. Shahi, Sr. Advocate                                                                          |
| For the Respondent/s   | : | Mr. Jitendra Kumar Singh, APP                                                                          |

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**CAV JUDGMENT**

**Date : 08-07-2025**

1. A short but seminal question is involved in the  
instant Criminal Revision. The issue is as to whether any  
order rejecting an application under Section 311 of the Code



of Criminal Procedure is an interlocutory order and, therefore, not revisable, even if the order of rejection of application for examination of an additional witness, not charge-sheeted or not named in the complaint, is found to be necessary for just decision of the case. Secondly, whether denial of examination of a material witness, whose evidence, the Court considers absolutely necessary for just decision of a criminal case.

2. It is easy to dismiss the instant criminal revision relying on the decision of the Hon'ble Supreme Court in ***Honnaiah T.H. v. State of Karnataka & Ors.*** (Criminal Appeal No. 1147 of 2022), decided on 4<sup>th</sup> of August, 2022.

3. It is held by the Hon'ble Supreme Court in the aforesaid case that under Section 397(2) of the Cr.P.C., the powers of revision can not be exercised in relation to an interlocutory order passed in any appeal, enquiry or trial or other proceedings.

4. On the same analogy, it is urged by the learned senior counsel appearing on behalf of the Opposite Party that an order rejecting an application for examination of a non-charge-sheeted witness is an interlocutory order and,



therefore, the said order is not revisable.

5. The learned Advocate appearing on behalf of the Opposite Party refers to another decision in the case of ***Girish Kumar Suneja v. Central Bureau of Investigation***, reported in ***(2017) 14 SCC 809***, wherein, the Hon'ble Apex Court was pleased to make distinction between interlocutory order and intermediate order. It is held by the Hon'ble Supreme Court that an intermediate order is one which is interlocutory in nature, but when reversed, it has the effect of terminating the proceeding and thereby resulting in a final order. According to the Hon'ble Supreme Court, an order of taking cognizance of an offence and summoning an accused and an order for framing charges, *prima facie*, are interlocutory in nature but when an order of taking cognizance and summoning an accused is reversed, it has the effect of terminating proceedings against that person resulting in a final order in his or her favour. Similarly, an order for framing of charges, if reversed, has the effect of discharging the accused person and resulting in a final order in his or her favour. Therefore, an intermediate order is one which, if passed in a certain way, the proceeding would



terminate, but if passed in another way, the proceeding would continue. Therefore, an intermediate order, the effect of which terminates a criminal case finally, is held to be revisable.

6. As referred by the learned senior counsel appearing on behalf of the Opposite Party, the Hon'ble Supreme Court in *Sethuraman v. Rajamanickam*, reported in *(2009) 5 SCC 153*, held that an order under Section 91 and Section 311 of the Cr.P.C., seeking directions to produce the Bank pass books, income tax accounts and LDS deposit receipts of the appellant as also for recalling him for cross-examination is an interlocutory order and the revisional court would not have interfered against such order which is absolutely interlocutory in nature.

7. It is now necessary to describe factual background of the case in a short compass.

8. On 14.07.2018, the petitioner, Shailesh Kumar, submitted a written application to the Officer-in-Charge, Hisua Police Station, alleging that on the same day at approximately 03:30 P.M., he had gone to attend a Janta Darbar (public grievance forum) convened at the premises



of Hisua Police Station, being presided over by the then Circle Officer of Hisua Block, Shri Pintu Kumar. During the course of the hearing, the petitioner was allegedly assaulted by Varun Kumar with an iron chair, causing injuries to his head, mouth, and hand. Two other persons, Purushottam Kumar and Deepak Kumar, allegedly attempted to strangle the petitioner. It was further stated that members of the public and several officers present at the venue intervened and managed to rescue the petitioner. Varun Kumar was reportedly apprehended on the spot and handed over to police, while the others fled away.

9. On the basis of the said complaint, Hisua P.S. Case No. 201 of 2018 was registered on 14.07.2018 under Sections 341, 323, 307, 504, 506, and 34 of the Indian Penal Code. The investigation was conducted by Sub-Inspector Lalan Kumar Lalan, and upon completion, the police submitted charge-sheet against five accused persons, namely, Varun Kumar, Purushottam Kumar, Deepak Kumar, Gaurav Kumar and Jagdish Prasad Yadav. Cognizance was, subsequently, taken and the case proceeded to trial before the Court of the learned Sessions Judge, Nawada as



Sessions Trial No. 87 of 2019.

10. During the course of trial, it was found that although the occurrence took place in the presence of the Circle Officer, his statement had not been recorded under Section 161 Cr.P.C., nor was he cited as a prosecution witness in the charge-sheet. The prosecution filed a petition, dated 28.08.2019 under Sections 230 and 311 Cr.P.C., praying for issuance of summons to the Circle Officer, Shri Pintu Kumar, stating that his testimony was essential, as he was the Presiding Officer of the proceeding and in his presence, the occurrence took place. The said petition remained pending for a substantial period.

11. On 02.11.2021, a further application was filed on behalf of the prosecution bringing to the notice of the Court that the petitioner had obtained a certified copy of the Janta Darbar proceeding, dated 14.07.2018 under the Right to Information Act, which showed that the proceeding was adjourned due to a scuffle between the parties. It was asserted that this entry, bearing the signature of the Circle Officer, confirmed his presence at the place of occurrence. A supplementary petition, dated 21.03.2022 was also filed,



informing the Court that the said Circle Officer was presently posted at Nimchak Bathani Block, District Gaya.

12. The said applications were considered and ultimately rejected by the learned Sessions Judge, Nawada, vide, order, dated 27.02.2023, on the ground that the Circle Officer was neither examined during investigation, nor his statement was recorded under Section 161 Cr.P.C., and his name did not appear in the charge-sheet. It was also noted that Prosecution Witness No. 1, Pramod Kumar, and the Investigating Officer (P.W\4), had not supported the claim regarding the presence of the Circle Officer at the place of occurrence.

13. Aggrieved by the said rejection, the petitioner has approached this Court in revision seeking to set aside the order, dated 27.02.2023 and for a direction upon the trial court to summon the then Circle Officer, Shri Pintu Kumar, as a court witness under Section 311 CrPC.

14. Besides the issue as to whether an order rejecting an application under Section 311 of the Cr.P.C. is an interlocutory order or not, another important issue is involved in the instant revision. The revision was filed by



the *de facto* complainant of the case. It is already mentioned that prosecution filed application under Section 311 of the Cr.P.C. for permission to examine the Circle Officer as a witness on behalf of the prosecution. On rejection of the said order, the *de facto* complainant filed the instant revision.

15. In Honnaiah T. H. (supra), the Hon'ble Supreme Court refers to its earlier decision in ***Sheetala Prasad v. Sri Kant***, reported in **(2010) 2 SCC 190**. In the said decision, the Hon'ble Supreme Court held that a private complainant can file a revision petition in certain circumstances, including when the Trial Court wrongly shuts out the evidence which prosecution wishes to produce. Noting the principles on which revisional jurisdiction can be exercised by the High Court at the instance of a private complainant, the Hon'ble Supreme Court observed: -

*“12. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional*



*jurisdiction can be exercised. Sub-section (3) of Section 401 of the Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of a private complainant*

*(1) where the trial court has wrongly shut out evidence which the prosecution wished to produce,*

*(2) where the admissible evidence is wrongly brushed aside as inadmissible,*

*(3) where the trial court has no jurisdiction to try the case and has still acquitted the accused,*

*(4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence, and*

*(5) where the acquittal is based on the compounding of the offence which is invalid under the law.”*

16. The principles, which have been enunciated in ***Sheetala Prasad*** (supra) have been recently relied upon by



the Hon'ble Supreme Court in *Menoka Malik v. State of West Bengal*, reported in *(2019) 18 SCC 721*.

17. Thus, it is no longer *res integra* that an informant or *de facto* complainant has the power to approach the High Court in revisional jurisdiction under the circumstances laid down in *Sheetala Prasad* (supra).

18. Under the above backdrop, comes the question as to whether the impugned order is revisable or not?

19. At the risk of repetition, this Court reiterates that the witness to whom prosecution wanted to examine is none other than the Circle Officer, who convened Janta Darbar and in whose presence, the informant was assaulted. He himself prepared a report regarding the fact of assault and the circumstances which compelled him to stop the said Janta Darbar. It is true that the Investigating Officer did not examine the Circle Officer under Section 161 of the Cr.P.C. He also did not see the report of the Circle Officer. However, during trial, on the basis of an application under the Right to Information Act, the said report of the Circle Officer was obtained and produced by the *de facto*



complainant during trial. If the Circle Officer is not examined and the said report which was obtained by the *de facto* complainant through RTI application is not exhibited, the prosecution case shall suffer irreparably.

20. In ***K. K. Patel & Anr. v. State of Gujarat & Anr.***, reported in ***AIR 2000 SC 3346***, the Hon'ble Supreme Court held as hereunder:-

*“That apart, the view of the learned Single Judge of the High Court that no revision was maintainable on account of the bar contained in Section 397(2) of the Code, is clearly erroneous. It is now well neigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage. {vide Amar Nath vs. State of Haryana (1977 4 SCC 137); Madhu Limaye vs. State of Maharashtra (1977 4 SCC 551); V.C. Shukla vs. State through CBI (1980 2 SCR 380); and Rajendra Kumar Sitaram Pande vs. Uttam(1999 3 SCC 134)}. The feasible test is whether by upholding the objections raised by a party, would it result in*



*culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable.”*

21. In the instant case, the proposed witness, the Circle Officer is an independent witness having no nexus with either of the parties. If an incident of physical assault and fighting took place between the *de facto* complainant and his men against the accused persons and the contemporaneous report prepared by him brings forth the actual incident before the Court, which is necessary for just decision of the case, in the considered view of this Court, rejection order of an application under Section 311 of the Cr.P.C. is revisable.

22. Let me now consider the decisions of this Court on this subject.

23. In the case of ***State of Bihar v Rajendra Mahaldar (2014 SCC OnLine Pat 276)***, this Court in



paragraph no. 25 has observed as follows:-

*“25. The language, employed in Section 311 of the Code of Criminal Procedure, clearly shows that this Section is couched in widest possible terms and do not limit the discretion of the Court in any manner. However, the wider the power, more cautious shall be the exercise thereof. No exercise of power, in a judicial proceeding, can be arbitrary and, more so, the power to call or recall a witness. Whereas the first part of Section 311 of the Code of Criminal Procedure, as already indicated above, gives a discretion to the Court to call, recall and re-examine any person as a witness, the second part of this Section does not really give any discretion to the Court; rather, it clarifies that if a Court forms the view, in the facts of a given case, that the evidence of the person, who is sought to be called, recalled or re-examined, is essential to the just decision of the case, it would be mandatory for the Court to call, re-call or re-examine such a person as a witness. This mandatory exercise of power can also be undertaken to obtain fresh evidence provided that the*



*Court forms a view, as indicated hereinbefore, that bringing of such fresh evidence on record is essential to the just decision of the case.”*

24. This Court, in paragraph 41 of the above-mentioned decision has further observed: -

*“41. It is for the reason, as indicated above, that in Mohanlal Shamji Soni v. Union of India [MANU/SC/0318/1991 : 1991 Supp (1) SCC 271], the Supreme Court has held that the aid of Section 311 of the Code of Criminal Procedure should be invoked only with the object of discovering relevant facts or obtaining proof of relevant facts in order to render a just decision in a given case. It is incumbent, on the part of the court, to take care to ensure that while exercising its powers under Section 311, Code of Criminal Procedure, it does not allow a lacuna, left by the prosecution or by the defence, to be fulfilled nor shall the exercise of power put the accused to disadvantage or cause prejudice to him or give an unfair advantage to the prosecution. Section 311 of the Code of Criminal Procedure, can also not be*



*utilized in such a way that it changes the nature of the case of either of the parties.”*

25. This Court, thus, finds that the judgment in ***Rajendra Mahaldar*** (supra) offers direct guidance when a material witness is omitted, whether by inadvertence or strategy, the Court is duty bound to sum up such witness, if justice so demands.

26. The Trial Court rejected the application under Section 230 read with Section 311 of the Cr.P.C. solely on the ground that the Circle Officer had not been examined by the Investigating Officer and was not cited as a charge-sheeted witness. The Trial Court while coming to such decision failed to consider the object and purport of the second part of Section 311 of the Cr.P.C.

27. It would not be out of place to mention here that ***Sethuraman*** (supra) decision was rendered by the Hon'ble Supreme Court in the context of purely interlocutory order concerning admissibility of documents and recalling of a routine witness, where no official record or material eye witness was involved.

28. In the instant case, by contrast, concerns a



senior public officer, whose presence is independently established through an official government document. Hence, the ratio of ***Sethuraman*** (supra) is distinguishable on facts.

29. For the reasons discussed above, this Court finds that the order, dated 27.02.2023, passed by the learned Sessions Judge, Nawada, in Sessions Trial No. 87 of 2019 suffers from material irregularity and legal infirmity. The learned trial court erred in rejecting the prosecution's petition, dated 28.08.2019, filed under Sections 230 and 311 of the Code of Criminal Procedure on the sole ground that the then Circle Officer, Hisua Block, Shri Pintu Kumar, was not examined under Section 161 Cr.P.C. and his name was not included in the charge-sheet.

30. The object of Section 311 Cr.P.C. is to ensure that all material evidence is brought on record to enable the Court to render a just and fair decision. The power conferred by the provision is intended not merely for the benefit of either the prosecution or the defence, but is meant to uphold the integrity of the trial itself. As held by the Hon'ble Supreme Court in Honnaiah T. H. (supra) and as



consistently reiterated in others, the exercise of this power must be guided by the paramount interest of justice.

31. In the present case, the prosecution has produced official documentary evidence, duly signed by the Circle Officer and obtained through RTI mechanism, showing that the Janta Darbar held on 14.07.2018 had to be adjourned due to a scuffle. This entry corroborates the petitioner's claim and sufficiently establishes the relevance and necessity of examining the Circle Officer as a court witness.

32. This Court is satisfied that the proposed witness is neither superfluous nor cumulative. His examination is essential for a fair adjudication of the matter. The rejection of the prosecution's application, in the circumstances, has resulted in exclusion of potentially decisive evidence from the trial record.

33. Accordingly, the revision application is allowed.

34. The order, dated 27.02.2023, passed by the learned Sessions Judge, Nawada in Sessions Trial No. 87 of



2019 is, hereby, set aside.

**(Bibek Chaudhuri, J)**

skm/-

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