

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62769 of 2024**

Arising Out of PS. Case No.-67 Year-2021 Thana- BENIPATTI District- Madhubani

1. Musafir Singh, Son of Late Dunilal Singh,
 2. Kaushik Singh @ Santosh Singh, Son of Musafir Singh,
 3. Kamlesh Kumar Singh, Son of Jagdish Singh,
- All are Resident of Village-Mahamadpur, P.S.-Benipatti, District-Madhubani

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. Anand Kumar Ojha, Senior Advocate Mr. Ravindra Kumar Singh, Advocate Mr. Ashok Kumar Karna, Advocate Mr. Abhishek Raj, Advocate
For the Opposite Party/s	:	Mr. Anil Kumar Singh No.1, APP

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

Date : 23-01-2025

The present application has been filed by the petitioners for quashing of the order dated 26.07.2024 passed by learned Additional Sessions Judge-III, Madhubani in connection with Benipatti P.S. Case No.67 of 2021 dated 29.03.2021 corresponding to ST No.211 of 2021 registered for the offences punishable under Sections 147, 148, 149, 341, 323, 324, 325, 326, 307, 302, 120-B of the Indian



Penal Code (for short 'I.P.C.') and Section 27 of the Arms Act, whereby the learned trial court has rejected the petition for recall of the prosecution witnesses for their cross-examination.

2. The brief case of prosecution, as per version of the informant, namely, Ramnarayan Singh, that on 29.03.2021 at about 1:00 PM at the distance of about 100-150 meters towards northern direction from his house, he heard sound of gun-shots and noise of the people and when he ran towards that direction, near the house of one Rudra Narayan Das, he saw Musafir Singh (petitioner no.1), Bhav Narayan Jha and Ghanshyam Jha giving orders to the accused persons, upon which, Praveen Jha and Naveen Jha shot at his nephew of the deceased, namely, Rana Pratap Singh, who fell down and, thereafter, one Shiveshwar Bharti alias Ful Babu tore his stomach through '*Bhujali*'. It is further alleged that Chandan Jha, Kaushik Singh (petitioner no.2), Baban Singh, Munna Singh and Jhuna Singh fired indiscriminately with their pistols at his another nephew, namely, Birendra Singh @ Biru Singh, who was badly injured. It is further alleged that Bhola



Singh, Kamlesh Singh (petitioner no.2), Manoj Jha, Sujeet Singh and Vimlesh Singh fired individually upon his nephew, namely, Ranvijay Singh and also assaulted him with iron pipe due to which, he sustained injuries and thereafter, he died on the spot. It is further alleged that Amarjeet Jha, Ashok Singh, Manoj Singh, Umesh Singh and Mukesh Safi fired individually with their pistols at his nephew, namely, Amrendra Singh and also assaulted him with iron pipe as a result of which, he also sustained injuries. It is further alleged that Sujay Safi, Prashant Jha, Vishwajeet Kumar, Anant Choudhary and Ankit Jha assaulted his son, namely, Manoj Singh with pistol, iron rod and iron pipe due to which, he also received injuries. The injured were brought to Benipatti hospital and all were referred to the hospitals, where during course of treatment, Biru Singh died and two persons had already died on the spot. The informant further stated that he has come to know that other co-accused persons, namely, Rajesh Kumar Jha, Shobha Kant Mehta, Rishikesh Jha @ Raja, Abhishek Kumar, Devendra Nath Thakur and Sunaina Devi were assembled at the house of his co-villager, namely, Ashok Singh and planned



a conspiracy and managed the arms and thereafter, committed the crime.

3. On the basis of the aforesaid written statement of the informant, Benipatti P.S. Case No.67 of 2021 dated 29.03.2021 was registered for the offences punishable under Sections 147, 148, 149, 341, 323, 324, 325, 326, 307, 302, 120-B of the Indian Penal Code (for short 'I.P.C.') and Section 27 of the Arms Act and thereafter , the police started investigation of this case.

4. During the trial, three prosecution witnesses were examined. On 22.04.2024, examination-in-chief of witness, namely, Vivek Kumar Singh was concluded, on 31.05.2024, examination-in-chief of witness, Khusboo Kumari was concluded and finally on 09.07.2024, examination-in-chief of witness, Surya Narayan Singh was completed and thereafter they were cross-examined, accordingly.

5. During trial, in cross-examination PW-1, namely, Vivek Kumar Singh deposed that petitioner no.2, namely, Kaushik Singh @ Santosh Singh and others fired upon the



deceased Birendra Kumar Singh @ Biru Singh. He further deposed that petitioner no.3, namely, Kamlesh Kumar Singh and others made firing at deceased Ranvijay Singh. He further deposed that petitioner no.1, namely, Musafir Singh along with Bhav Naryan Jha and Ghanshyam Jha ordered to continue assaulting all till their death.

6. PW-1 narrated the specific role attributed by the accused persons and manner of assault upon the deceased persons. The deposition appears to be speculative and imaginary if not manipulated. From the deposition of PW-1, an impression is created that as if he was present on the spot as an eye-witness having observed the action of the accused persons at the place of occurrence. Similarly, PW-2, namely, Khushboo Kumari and PW-3, namely, Surya Narayan Singh were also deposed about the role of the petitioners in commission of crime.

7. Petitioners came to know that all three witnesses, i.e. PW-1, PW-2 and PW-3, immediately after the occurrence had given interview to local media and made statement during said interview with T.V. channels, namely,



Mithila Mirror, News Haat, Bharat Uday Samachar on 29.03.2021, 04.04.2021, 05.04.2021 and 07.04.2021. The Reporters, who conducted the interviews and made recording were also identified. It is stated that the interview clippings are uploaded on the You Tube.

8. It is submitted by Mr. Anand Kumar Ojha, learned senior counsel appearing on behalf of the petitioners that a petition under Section 311 of the Code of Criminal Procedure (in short 'CrPC') was pressed by the petitioners before the learned trial court for the ends of justice as to recall the aforesaid witnesses, i.e. PW-1, PW-2 and PW-3, in view of different versions what they disclosed during media interview. The aforesaid statement, if be taken into consideration, will give a different look and colour of the entire prosecution case and the trustworthiness of the depositions.

9. In support of his submission, learned senior counsel relied upon para-27 of the legal report of Hon'ble Supreme Court as available through ***Zahira Habibullah vs. The State of Gujarat [(2006) 3 SCC 374]***, it reads as



under:-

"27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very



wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

10. Mr. Ojha, learned senior counsel further relied upon the legal report of Hon'ble Supreme Court as available through ***Harendra Rai vs. The State of Bihar [(2023) SCC Online 1023]***, wherein Hon'ble Supreme Court categorically held in Para-128 of the aforesaid judgment as under:-

"128. Section 311 CrPC confers wide powers on any court at any stage of any inquiry, trial or other proceeding under this Code to summon material witness or examine person present. Such person may not be a person summoned as a witness. Power to recall and re-examine is also vested. The concept is that it should be essential for the just decision of the case. The said section is reproduced hereunder:-

"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 as a witness, or examine 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”.

This power can be exercised not only by the trial court but also by the appellate court or Revisional Court. The logic behind this provision is that the endeavour of the courts is to find out the truth which would be essential for the just decision of the court.”

11. It is further submitted that recalling of aforesaid prosecution witnesses would not amount to prejudice to accused persons. It is submitted by Mr. Ojha that learned trial court has failed to appreciate the evidentiary value of the statement given by the aforesaid witnesses



before the media and rejected the petition of petitioners by taking note of legal provisions as available under Section 145 of the Evidence Act and, thus, the learned trial court has failed to appreciate the wide discretionary power to recall witnesses under Section 311 of the CrPC for ends of justice.

12. The factual submissions of this case as advanced by Mr. Ojha, while arguing on behalf of the petitioners reveals that the electronic documents was produced by accused persons, which is nothing but a secondary electronic evidence, without any support of certificate as mandatorily required under Section 65-B of the Indian Evidence Act.

13. It would be apposite to re-produce Section 65B(4) of the Indian Evidence Act, which is as under:-

"65B(4). (1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, --



(a) identifying the electronic record containing the statement and describing the manner in which it was produced;
(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,
and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."

14. A three Judge Bench of Hon'ble Supreme Court
in the matter of **Anvar P.V. vs. P.K. Basheer and Ors.**
[(2014) 10 SCC 473] has held that the statement of law on



admissibility of secondary evidence pertaining to electronic record does not lay down the correct legal position. The Bench has overruled it and held that an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B(4) of the Act are satisfied.

15. This Court is of the view that relevancy of any evidence cannot be judged on the cost of its genuineness. If petitioners failed to produce certificate as required under Section 65-B of the Indian Evidence Act what they have, the Court below has rightly rejected the prayer for recalling the witnesses on this score. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transportation, excision, etc., without such safe-guards, the whole trial based on proof of electronic records can lead to travesty of justice.

16. Hence, the petition stands dismissed at admission stage itself.



17. Let a copy of this judgment be sent to learned
trial court immediately.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07-02-2025
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