

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3449 of 2024

Arising Out of PS. Case No.-45 Year-2003 Thana- ROSERA District- Samastipur

Suresh Prasad Yadav @ Suresh Prasad Azad, son of Late Bindeshwari Yadav
resident of village -mahuli, P.S. Rosera, District- Samastipur.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ramakant Akela, Advocate

For the Opposite Party/s : Mr.Ram Sevak Choudhary, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 28-03-2025

Heard learned counsel appearing on behalf of the
parties.

2. The present application has been filed for quashing the order dated 02.11.2023 passed by learned Additional Sessions Judge-II, Rosera (Samastipur) in S.T. No. 977/2008, originated from Rosera P.S. Case No. 45/2003 for the offences punishable under Section 436/34 of the Indian Penal Code. This prayer is related to the need to get the evidence of the informant and the I.O. of this case.

3. It is submitted by learned counsel appearing for the petitioner that the examination of informant, who is the petitioner, namely Suresh Prasad Yadav & Suresh Prasad Azad is essential for just decision of this case. It is submitted that the petitioner was busy with the treatment of his wife, who was admitted with Patna



Medical College and Hospital for treatment of her brain tumor, where during the course of treatment, she died. In support of his submission, learned counsel referred the Annexure-2 series, which are the papers/documents related with the treatment of her ailing wife.

4. It is submitted that in view of aforesaid hardship, non-presence of petitioner before the learned trial court was neither intentional nor deliberate, rather due to aforesaid compelling circumstances which was beyond the reach of the petitioner. It is submitted that considering this hardship, the petitioner be given an opportunity for his examination for just disposal of this case being an informant.

5. Learned APP accepts notice on behalf of State and while opposing the petition could not disputed the submission as raised by learned counsel appearing for the petitioner.

6. It would be apposite to reproduce Section 311 of the Cr.P.C., which is 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.”

7. Learned counsel also relied upon the legal report of ***Ratanlal Vs Prahlad Jat and Ors.*** reported in ***(2017) 9 SCC 340***, wherein Hon'ble Supreme Court categorically stated that for strong and valid reasons, the examination or re-examination of witness be allowed.

8. In view of aforesaid factual and legal submission as the petitioner was the informant of Rosera P.S. Case No. 45/2003, G.R. No. 252 of 2003 and his non-appearance was due to aforesaid explained hardship, accordingly the present petition stands allowed.

9. Accordingly impugned order dated 02.11.2023 passed by learned Additional Sessions Judge-II, Rosera (Samastipur) in S.T. No. 977/2008, originated from Rosera P.S. Case No. 45/2003 is hereby set aside and quashed.

10. It is made clear that petitioner and I.O. shall be examined within four weeks from the date of receiving of this order.

11. At this stage, it was informed by learned counsel appearing for the petitioner that the next date in this case is 09.04.2025.

12. The learned trial court is directed to examine



petitioner/informant on 09.04.2025 and also the I.O. of this case thereafter. Petitioner is directed to appear before the court concerned on aforesaid date.

S.P., Samastipur is directed to ensure the presence of I.O. of this case on 09.04.2025, for his examination.

13. Let copy of this order be sent to the trial court, without delay and be sent to S.P. Samastipur also for necessary compliance.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.03.2025
Transmission Date	28.03.2025

