

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.87415 of 2024

Arising Out of PS. Case No.-256 Year-2017 Thana- KOILWAR District- Bhojpur

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1. Pooja Kumari @ Puja Devi W/o Vinod Kumar, D/o Ramlal Ram R/o vill - Kayam Nagar, P.s .- Koilwar, Distt.- Bhojpur
 2. Ram Lal Ram S/o Late Baliram Ram R/o vill - Kayam Nagar, P.s .- Koilwar, Distt.- Bhojpur

... .. Petitioners

Versus

1. The State of Bihar
2. Manish Kumar @ Munna S/o Ram Lal Ram R/o vill - Kayam Nagar, P.s .- Koilwar, Distt.- Bhojpur

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr.Prabhat Kumar Singh, Advocate Mr.Ganesh Pd. Singh, Advocate Ms.Priya, Advocate
For the Opposite Party/s :		Mr.Lalan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 13-02-2025

Heard learned counsel appearing on behalf of the petitioners and learned A.P.P. for the State.

2. Petitioner, in the present, case is seeking quashing of order dated 18.11.2024 as passed by learned 5th Additional Sessions Judge, Bhojpur at Ara in connection with Session Trial No. 212 of 2019 arising out of Koilwar P.S. Case No. 256 of 2017, whereby and whereunder learned court has allowed the application of prosecution dated 28.07.2023 filed under section 231 of the Code of Criminal Procedure (in short the 'Cr.P.C.') and directed the prosecution to produce Purnima Kumari, who is not the charge-



sheeted witness.

3. It is submitted by learned counsel appearing for the petitioners that recalling of witnesses under Section 231 of the Cr.P.C. is not permissible for which exclusive provision under section 311 of the Cr.P.C. is available and that too when it appears to the court that examination of such witness is essential to the just decision of the case and, therefore, the impugned order appears bad in the eyes of law.

4. It would be apposite to reproduce Sections 231 and 311 of the Cr.P.C. for better understanding of the facts of the case, which reads as under:

"231. Evidence for prosecution.—(1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution. (2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

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.



5. It would be further apposite to reproduce the impugned order dated 18.11.2024 for better understanding of the case, which reads as under:

**"Addl. Sessions Judge Vth, Bhojpur, Ara
Sessions Trial No. 212 of 2019**

ORDER

A petition dated 28.07.2023 was filed by the state u/s 231 of Cr.P.C. for evidence of Purnima Kumari. Copy was served to the Ld Counsel of defence.

Heard the argument of both sides. The Ld A.P.P. agreed that the witness Purnima Kumari is an eye witness of the case and she is a material witness of this case. Even though her statement u/s 161 of Cr.P.C. was not recorded and she is not a charge sheeted witness her evidence is necessary for disposal of this case.

On the other hand the Ld counsel for the defence stated that the prosecution is lying to create evidence. Almost all the charge sheeted witnesses have been examined and now the prosecution is trying to produce Purnima Kumari as witness because she lives with the informant and they have tutored her.

Heard the contentions of both the parties. In the written report the informant has stated that he left the children with wife in room. P.W.4 has also stated that deceased had three daughters who lived with her. P.W.3 the informant has stated that when his wife was killed, his children were present at home with her. It is the solemn duty of the court to let all the relevant evidence necessary for proper decision of case to come on record. As far as it is defence contention that they will be prejudiced is concerned, they will get every opportunity to cross examine the witness and extract the truth from the witnesses.

Hence petition dated 28.07.2023 is allowed. Prosecution is directed to produce the witness on the next date.

Dictated and corrected
Sd/-
Addl. Sessions Judge, Vth
Bhojpur, Ara."



6. No doubt, a witness whose statement not recorded during investigation under Section 161 of the Cr. P.C. or as such not a charge-sheeted witness can be called for examination by exercising power under section 311 Cr.P.C., if it appears to the court that examination of said witness is essential to the just decision of the case.

7. It also appears from the impugned order that the reason for calling the witness was based upon the factual analysis as deposed by PW-3 and PW-4 during the trial and also with an excuse that the defence may get an opportunity to cross-examine the witness. It is not the position of law. The law is very clear through section 311 of the Cr.P.C. that it must appear to the court that examination of such witness is essential to the just decision of the case.

8. In view of the aforesaid facts, the impugned order dated 18.11.2024 passed by learned 5th Additional Sessions Judge, Bhojpur, Ara in connection with Sessions Trial No. 212/2019 arising out of Koilwar P.S. Case No. 256 of 2017, is hereby quashed and set-aside.

9. Accordingly, this application stands allowed.

10. However, it appears to the learned trial court that the examination of any witness including this witness is essential for



just decision of this case, same be taken note through proper application, if moved under section 311 of the Cr.P.C., or it appears to the court in accordance with law.

11. Let a copy of this judgment be sent to the learned trial court/concerned court forthwith.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2025
Transmission Date	13.02.2025

