

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2968 of 2025

Arising Out of PS. Case No.-93 Year-2013 Thana- BARH District- Patna

Surendra Prasad, Son of Late Ramchandra Saw, Resident of Salempur Gola Road, P.O. and P.S. - Badh, District - Patna, Bihar

... .. Petitioner

Versus

1. The State of Bihar
2. Nikhil Poddar, Son of Vinod Kumar Poddar, Resident of P. 200 Jagarnath Ghat, Cross Road, Kolkata, West Bengal

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mrs. Nivedita Nirikar, Senior Advocate Mr. Shashi Priya, Advocate Ms. Asmita Bharti, Advocate Mr. Shashank Shekhar, Advocate
For the Opposite Party/s	:	Ms. Nirmala Kumari, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 28-01-2025

Heard Mrs. Nivedita Nirvikar, learned senior counsel

appearing on behalf of the petitioner and learned APP for the

State.

2. The present application has been preferred by

the petitioner for quashing the order dated 27.11.2024

passed by the learned A.C.J.M.-I, Barh, Patna in Barh P.S.

Case No.93 of 2013, whereby the learned trial court has

rejected the petition filed by the petitioner under Section 311

of the Code of Criminal Procedure (for short 'CrPC') for

recalling of PW-2 and PW-7 without considering the prejudice



caused to the petitioner, as the same is essential for a fair trial.

3. It is submitted by Mrs. Nivedita Nirvikar, learned senior counsel appearing for petitioner that the examination of PW-2 and PW-7 are essential for ensuring fair trial for the reason that the entire disputed transaction of Rs. 17,00,000/- (Rupees Seventeen Lakhs), which is core of this case was raised on the basis of oral agreement, wherein during trial, the Investigating Officer of this case when examined as PW-9 produced twelve bilties/consignments in support of monetary transactions between the parties. It is further submitted that admittedly PW-2 and PW-7 deposed during the trial that there is no documentary evidence in support of any monetary transactions between the parties and therefore their recall appears essential for fair trial.

4. On aforesaid note, it is further submitted by Mrs. Nivedita Nirvikar that PW-2 and PW-7 be permitted to call for their re-examination in view of deposition of PW-9/Investigating Officer of this case, as deposed by him in paragraph no. 57 of his testimony *qua* aforesaid facts. It is



further submitted that these two witnesses will be examined maximum on two dates. In support of her submission, learned senior counsel relied upon the legal report of Hon'ble Supreme Court as available through ***State (NCT of Delhi) vs. Shiv Kumar Yadav [(2016) 2 SCC 402]***. It is submitted that the matter is list for argument for 11.03.2025.

5. Considering the aforesaid fact, it appears *prima facie* that the recalling of PW-2 and PW-7 appears essential for fair trial in view of testimony of PW-9/I.O., as submitted and, therefore, the order dated 27.11.2024 passed by the learned A.C.J.M.-I, Barh, Patna in Barh P.S. Case No.93 of 2013 is hereby quashed and set aside.

6. The examination of PW-2 and PW-7 upon recall be done on two dates, one day for each and if for any of the reason, the petitioner failed to examine PW-2 and PW-7 upon recall, they be discharged without giving any further opportunity of their re-examination. In any case, these two witnesses be examined on or before 20th of March, 2025 by fixing this matter on day-to-day basis, if requires.

7. With aforesaid observations, the present petition



stand allowed.

8. Office is directed to send a copy of this judgment to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31-01-2025
Transmission Date	31-01-2025

