

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18327 of 2016

Arising Out of PS. Case No.-143 Year-2009 Thana- SASARAM MUFFSIL District- Rohtas

1. Satendra Rai, Son of Singhashan Rai, R/o vill - Bishanpura, P.S. - Sasaram, Dist- Rohtas.
2. Santosh Rai@Manu Rai, Son of Ramehswar Rai.
3. Sanjeet Rai, Son of Janardan Rai.
4. Pradeep Kumar@Dabloo @Pradeep Rai, Son of Rajdeo Rai.
5. Ravi Rai, Son of late Babban Rai.
6. Ajeet Rai, Son of Janardan Rai.
7. Akhilesh Rai, son of Naresh Rai.
8. Anil Rai@Pintu Singh, Son of late Babban Rai, All Resident of Villl- Bishanpura, P.S. Sasaram District Rohtas.

... .. Petitioners

Versus

1. The State of Bihar
2. Birendra Rai, S/o Late Ram Nagina Rai, R/o vill - Bishunpura, P.S. - Sasaram, Distt. - Rohtas.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Bajrang Lal, Advocate Mr. Ashok Kumar, Advocate
For the State	:	Mr. M.Dayal, APP
For the Vigilance	:	Mr. Arvind Kumar, Advocate
Amici Curiae	:	Mr. Anil Singh, Advocate Mr. Siddharth Harsh, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

31 06-02-2026 The present Criminal Miscellaneous Petition has been preferred by the Petitioner against the impugned order dated 30.09.2015, passed by learned 3rd Additional District and Sessions Judge, Rohtas at Sasaram in Sessions Trial No.195 of 2010, whereby learned Additional Sessions Judge has allowed the application of the prosecution filed under Section 311 Cr.PC



to summon four witnesses, including the informant, namely, Virendra Rai, Abhinay Kumar, Binod Rai and Chandan Rai.

2. Heard learned counsel for the Petitioner, learned APP for the State and learned *Amici Curiae*, Mr. Anil Singh, Advocate and Mr. Siddharth Harsh, Advocate

3. Learned counsel for the Petitioner submits that the impugned order has been erroneously passed by learned Additional Sessions Judge in violation of Section 362 Cr.PC which prohibits altering or reviewing an order except to correct any clerical or arithmetical error. He refers to the order dated 11.03.2014, whereby learned Trial Court has rejected the similar application filed by the prosecution for summoning the same witnesses and in such situation, learned Trial Court has no jurisdiction to review his own order. He further submits that against the order dated 11.03.2014 passed by learned Additional Sessions Judge, the prosecution had remedy to come to this Court challenging the dismissal of its application for summoning witnesses but the prosecution has not availed this remedy and hence, this order has become absolute. Learned Additional Sessions Judge had no power to review it, subsequently. Hence, the order is not sustainable and it is liable to be set aside.



4. However, learned APP for the State finds that there is no illegality or impropriety in the impugned order. In the interest of justice, the summoning of witnesses was required.

5. However, learned *Amici Curiae*, Mr. Anil Singh and Mr. Siddharth Harsh submit that as per the law, no order by Criminal Court can be altered or reviewed except to correct the arithmetical or clerical error. The Criminal Court had no power to allow the similar application which he had earlier rejected. The prosecution should have come to this Court against the rejection order dated 11.03.2014, whereby learned Additional Session Judge had rejected the application of the prosecution to summon the witnesses. They also refer to the judgment, **State of Punjab Vs. Devendra Pal Singh Bhullar**, as reported in **2011 14 SCC 770**, wherein **Hon'ble Supreme Court** has held that no Criminal Court can alter or review its own order except to correct arithmetical or clerical error. Even the inherent power under article 482 Cr.PC cannot be invoked by this Court contrary to any statutory provisions as provided in 362 Cr.PC. Hence, the impugned order is not sustainable in the eye of law and the same is liable to be set aside.

6. At this stage, learned counsel for the Petitioner also submits that even interest of justice does not lie on the side of



the prosecution. The FIR has been lodged in this case long way back in the year 2009 alleging that there is land dispute between the parties and there was fisting and air firing. There is no allegation of any gun shot injury to any alleged victim. The case is false and frivolous. He further submits that despite sufficient opportunity granted by learned Trial Court, the prosecution has failed to produce any witnesses and even after the impugned order passed in the year 2015, about ten years ago, the prosecution has failed to adduce any witnesses and the statement of the accused has been already recorded under Section 313 and at this stage, re-opening of the prosecution evidence would be grave injustice to the accused persons, who are now at the fag end of their life.

7. I considered the submissions advanced by both the parties and perused the material on record.

8. I find that there is no dispute that under Cr.PC, Criminal Court cannot review its order except to correct any clerical or arithmetical error. Even inherent power under 482 Cr.PC cannot be invoked to do something which is prohibited under Cr.PC. Moreover, the prosecution had remedy to file appropriate proceeding against the order dated 11.03.2014 whereby the application under Section 311 filed by the



prosecution was dismissed by learned Addition Sessions Judge, but the prosecution has not availed any opportunity, and hence, that order has become absolute.

9. Hence, in my considered view, the petition is liable to be allowed. Accordingly, the present petition stands allowed.

10. However, this Court is very much concerned about the role played by the prosecution as well as the Judicial Officers presiding over the Trial Court. The Public Prosecutor at the Trial Court seems to be gross negligent in prosecuting the case as well as the Judicial Officers presiding the Trial Court have also abdicated their duty. They have failed to exhaust the measures provided in Cr.P.C to ensure the attendance of the relevant prosecution witnesses in the Court for their examination. If the government agency, like police was not discharging their duty to execute the processes, they should have taken action against the police officials. I find nothing of that sort in the order sheet. I have nowhere found that all the processes were issued by learned Court against the witnesses nor is any execution report of the processes. It reflects very badly on the part of the Judicial Officers, who have presided over the Trial Court from time to time. This Court is refraining from taking any step towards disciplinary action against the



Judicial Officers or any step against the prosecutor, but the Court is not approving the conduct as shown by them. They must be alert in future.

11. The assistance provided by learned *Amici Curiae* is highly appreciated. The Secretary, Patna High Court Legal Services Committee is directed to pay an amount of Rs.7,000/- each to learned *Amici Curiae* as honorarium.

12. A copy of this order be sent to learned *Amici Curiae* as well as the Secretary, Patna High Court Legal Services Committee for information and needful.

(Jitendra Kumar, J.)

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