

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32533 of 2025**

Arising Out of PS. Case No.-413 Year-2022 Thana- KHAIRA District- Saran

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1. Saddam Hussain, S/o- Md. Shamim @ Mohammad Shamim@Md. Shamim Alam Village- Chota Takiya, P.S.- Khaira, District- Saran, Bihar
 2. Md. Nawshad Alam, S/o- Md. Shamim @ Mohammad Shamim Village- Chota Takiya, P.S.- Khaira, District- Saran, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Danish Sami, Advocate

For the Opposite Party/s : Mr. Kumar Veerendra Narayan, APP

**CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT**

Date : 12-02-2026

Heard the learned counsel for the petitioners, learned counsel for the opposite party no.2 and learned APP for the State.

2. The present application has been filed by the petitioners invoking the inherent jurisdiction of this Hon'ble Court for quashing the order dated 24.01.2025 passed by the learned Additional Sessions Judge-V, Saran at Chapra in Khaira



P.S Case No.413 of 2022 dated 13.11.2022 for the offence under Section 302 read with Section 34 of the Indian Penal Code.

3. The facts giving rise to the present case are that the petitioners are accused of the murder of the father of the informant along with others and they are facing trial in connection with Khaira P.S. Case No. 413 of 2022. The said case is running for evidence in the Trial Court and few witnesses have also been examined. It is further stated that the prosecution has adduced the informant of the case, namely, Md. Perbej Alam as P.W. 5 and his examination-in-chief and cross-examination were completed on 20.06.2024 and he was discharged. Further, due to some technical issues, the petitioners have changed their counsel and their new counsel suggested to them that some important questions have been left to put before the informant (P.W.5) during his cross-examination, for which the petitioners filed a petition under Section 311 of the Cr.P.C. on 02.12.2024, but the same was rejected by the learned Trial Court on 24.01.2025. Hence, the present application has been filed.

4. Learned counsel for the petitioner submits that after the investigation the police submitted charge-sheet and the



charges were also framed and the trial commenced. Learned counsel for the petitioner submits that during the prosecution evidence, it was realized that the informant was examined as a witness and was also discharged on 20.06.2024, but later it was realized that the previous defence counsel of the petitioner did not put essential questions to the witness and some relevant and essential questions were left out and therefore realizing the necessity in the interest of justice, an application under Section 311 of Cr.P.C. dated 02.12.2024 was filed before the learned Trial Court. It has further been submitted that a rejoinder too was filed by the prosecution and after considering the pleadings of the parties, the learned Additional Sessions Judge was pleased to reject the petition dated 02.12.2024 by order 24.01.2025. Learned counsel for the petitioner submits that contrary to the settled principal of law the learned Trial Court has rejected the petition, saying that the questions which were needed to be asked by the defence from the P.W.5, the informant, have not been suggested. The learned counsel, referring to the judgment rendered by the Hon'ble Supreme Court in the case of ***Ritesh Tewari & Anr. vs. The State of U.P & Ors.*** reported in ***AIR 2010 SC 3823*** submits that the Hon'ble Supreme Court has observed as under:-

“Every trial is voyage of discovery in



which the truth is the quest. Therefore, power is to be exercised with an object to subserve the cause of justice and public interest and for getting the evidence in aid of a decision and to uphold the truth”.

5. Learned counsel for the petitioner further relies upon the case of **V.N. Patil vs. K. Niranjana Kumar** reported in **2021 (3) SCC 661** wherein the Hon'ble Supreme Court has observed that :-

“The aim of every Court is to discover the truth. Section 311 of Cr.P.C. is one of such provisions which strengthen the arms of a Court in its effort to unearth the truth except where applications are filed as an abuse of the process of law. Such discretion will have to be exercised by the Court”.

6. It has, thus, been submitted that in view of the settled principles of law, in the interest of justice, the application filed by the accused petitioners ought to have been allowed and the informant (P.W.5) should have been called for re-examination.

7. Learned APP of the State has submitted that it is a settled principle of law that Section 311 of Cr.P.C. should not be filed in order to fill the lacuna of the prosecution case.

8. The learned APP further submits that the



application itself shows that with the change of lawyer the accused persons have been suggested by the new counsel that certain questions were required to be put to the informant (P.W.5) and therefore, the application was filed. It has, thus, been submitted that such application only to fill the lacuna of either party should not be permitted to be allowed and the learned Trial Court was justified in rejecting such applications.

9. Having heard the learned counsel for the parties and having gone through the pleadings made by the petitioners, it is not disputed that P.W. 5, namely, Md. Perbej Alam, the informant, was examined on 20.06.2024 and his evidence was closed. It is also not disputed that the application under Section 311 was filed almost six months after the examination of P.W.5.

10. Before I proceed to consider the matter, it is necessary to deal with the law relating to under Section 311 Cr.P.C. which reads as follows:

“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.”

11. Form the above it is clear that Section 311 of Cr.P.C. provides wide power to the Criminal Court to do the following:-

*“i. Summon any person as a witness, or
ii. Examine any person present in court, though not summoned as witness, or
iii. Recall and re-examine any person already examined.”*

12. The Hon’ble Supreme Court in the case of **Girish vs. State of UP** reported in **2020 SCC OnLine All 1063** and in the case of **Veerendradas Bairagi vs. Shreekant Bairagi 2019 SCC OnLine MP 7006** the Court held that the subsequently engaged counsel cannot seek one more opportunity as a matter of right to further delay the matters. Rather the court held:-

“9. In the present case, it appears from the application filed under Section 311, Cr.P.C. that request for re-examination has been made solely on the ground that Senior Counsel has been engaged in place of a Junior Counsel as the Junior Counsel, according to the petitioner, has not conducted the cross-examination of witnesses in an effective manner. However, in the light of the legal position, as discussed above, it is certainly not within the scope of section 311 Cr.P.C. to



countenance such a prayer. No illegality or perversity has been committed by the trial Court in passing the impugned order.”

13. In view of the aforesaid judicial pronouncements, it is clear that the provisions of Section 311 Cr.P.C. should not be allowed to be initiated only because with the change of lawyer certain points which were relevant and were inadvertently left out earlier would be put through cross-examination.

14. To the understanding of this Court, calling of a witness only because with the change of a counsel the parties have been suggested by the new counsel that certain questions were required to be put to the informant, who was initially cross-examined and was released almost six months ago, should be called only to put certain questions which were left out. Initiation of the inherent jurisdiction of the High Court for setting aside such orders where the application under Section 311 of the Cr.P.C. has been dismissed on the ground that no question has been brought on the record by the defence which needed to be put to the witness against whom the recall petition has been filed would amount to interference of the Trial.

15. Thus, in view of the discussions made hereinabove and the principles of law as enumerated above, I do



not find any illegality in the order dated 24.01.2025.

16. The present application stands rejected.

(Sourendra Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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