

**(2012) 08 PAT CK 0100**

**Patna High Court**

**Case No:** Criminal Miscellaneous No. 20406 of 2012

Saifullah Khan

APPELLANT

Vs

The State of Bihar

RESPONDENT

**Date of Decision:** Aug. 31, 2012

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 311
- Penal Code, 1860 (IPC) - Section 307

**Citation:** (2013) 2 PLJR 843

**Hon'ble Judges:** Anjana Prakash, J

**Bench:** Single Bench

**Advocate:** Prem Kumar Jha, Rajesh Kumar Jha, Mukesh Mishra and Nishant Kr. Jha, for the Appellant; Rajendra Singh Shastri, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

Anjana Prakash, J.

Heard learned counsel for the Petitioner and the State. The Petitioner, who is the Informant, seeks quashing of the order dated 5.4.2012 passed by the Additional District & Sessions Judge-1, Darbhanga, in Sessions Trial No. 136 of 2006 arising out of Ashok Paper Mill (Rameshwar Nagar) P.S. Case No. 18 of 2005 dated 23.3.2005 by which he has rejected an application for examination of some witnesses.

2. The prosecution case is that while the Informant was sitting with other witnesses, his son was fired at and, thereafter, he himself was assaulted variously. A case u/s 307 of the Indian Penal Code was instituted on such allegations. It appears from the order sheet that the charges were framed against the accused persons on 17.2.2010 whereafter on 28.9.2010, four witnesses were examined but despite issuance of warrants, both bailable and non bailable, the rest of the witnesses were not examined. So, on 22.11.2010, within two months, the prosecution case was closed. However, on 1.12.2010, a petition was filed on behalf of the prosecution u/s 311

Cr.P.C. which was allowed on 5.2.2011 directing the prosecution to produce the witnesses on next three consecutive dates. However, only one witness as a Court witness could be examined during these days since their cross-examination continued endlessly.

3. Once again, the prosecution case was closed on 5.9.2011 whereafter, immediately on 15.9.2011, the Petitioner filed an application for examination of the witnesses. On 10.12.2011, one witness was examined as a Court witness, but two witnesses were objected to be examined on behalf of the defence because they were not charge sheeted witnesses. Once again, on 18.1.2012, the prosecution filed a petition u/s 311 Cr. P.C. for the examination of the witnesses which was disallowed by the Trial Court.

4. I must remind that witnesses even if not cited in the charge sheet, can be examined by the Trial Court if their examination is essential for the just decision of the case. I find from the First Information Report that both Heera Prasad and Firoj Khan were named therein and, therefore, they are the important witnesses of the prosecution. The Trial Court should not have accepted the objection of the defence and should have permitted for examination of these two witnesses.

5. In such view of the matter, the application is disposed off with the direction to the Trial Court to examine the witnesses sought by the Prosecution within thirty working days and will fix specific dates for their examination and will not permit long cross-examination only to frustrate examination of the witnesses. He will send the particulars of the Investigating Officer and Doctor to the Superintendent of Police concerned fixing specific dates for their examination along with a copy of this order who shall ensure production of the witnesses on the date so fixed by the Trial Court. Let this order be communicated to the Superintendent of Police, Darbhanga, in connection with Sessions Trial No. 136 of 2006 arising out of Ashok Paper Mill (Rameshwar Nagar) P.S. Case No. 18 of 2005, through FAX at the cost of the Petitioner.