
(2005) 10 PAT CK 0021

In the Patna High Court

Case No : Criminal Miscellaneous No. 17361 of 2005

Manik Chandra Watsalya and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 26-10-2005

Acts Referred:

Citation : (2006) 1 PLJR 472

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

I.P. Singh, J.—This application has been filed for quashing the order dated 29.4.2005 passed in Sessions Trial No. 110/97 by the learned A.D.J. (Fast Track Court-5) Saharsa by which the two prosecution witnesses have been allowed to be examined were not named as witnesses in the F.I.R. or in the deposition of informant even the police had not made them witnesses in its charge-sheet and were not examined even during investigation. It has been further submitted that their evidenciary value is doubtful and they are being examined only to fill up the lacunae in the case of prosecution. Allowing their examination by the court below is illegal, improper and unjust. In this regard he has relied on a decision of Apex Court reported in AIR 1977 SC 1936 Ram Lakhan Singh & Ors. vs. The State of Uttar Pradesh in which it is held that a witness who never figured during investigation and not named in the charge-sheet and not examined by Police should not be relied especially when the charge is for a grave offence. The apex court has categorically held that it would be unsafe to give any evidenciary value to such witness. This provision of summoning a witness is only for such witness who are material witnesses and also for just decision of the case. Examination of witnesses cannot be allowed only to fill up the lacunae in the prosecution case.

2. From impugned order, there is no mention about the reliance of these two witnesses. Accordingly, the order passed by the learned court below is not sustainable in eye of law. The order dated 29.4.2005 is hereby quashed and this

application is allowed.