
(2003) 04 PAT CK 0051

In the Patna High Court

Case No : Criminal Miscellaneous No. 1340 of 2003

Radha Shukla and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 17-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 311

Citation : (2003) 2 PLJR 733

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

Bench : Single Bench

Judgement

I.P. Singh, J.—This application is directed against, the order dated 28.11.2002 passed in Sessions Trial No. 683 of 1997, arising out of Complaint Case No. 1 of 1986 by 8th Additional Sessions Judge, Patna whereby he has allowed the prosecution to examine Rai Ramesh Prasad as prosecution witness u/s 311 of the Code of Criminal Procedure.

2. Learned Counsel for the Petitioners has submitted that Rai Ramesh Prasad was neither named in the complaint petition as a witness nor he was examined in course of enquiry u/s 202, Code of Criminal Procedure despite several opportunities were given to the complaint. The only motive of the prosecution is to fill up the lacuna in the case. He has further submitted that the court below has passed the order impugned without applying its judicial mind, as such, the order impugned is not sustainable in the eye of law and it is fit to be quashed.

3. Perused the order impugned. It appears that Rai Ramesh Prasad seems to be a material witness as he was present at the time when his dying declaration was made by the deceased. As such, his examination is essential for the just decision of the case. Accordingly, order dated 28.11.2002 does not require any interference at this stage. The learned court below is directed to examine Rai Ramesh Prasad within a month. It is made clear that no further time be granted. Accordingly, this application stands disposed of.