
(2006) 06 PAT CK 0054

In the Patna High Court

Case No : Criminal Miscellaneous No. 17445 of 2006

Rajan Tiwary

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 226

Citation : (2006) 3 PLJR 231

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.P. Singh, J.—This application has been filed for quashing the order dated 24.11.2005 passed by the Addl. Sessions Judge XI, Patna in S.T. No. 976 of 1999 by which the court below has allowed the application of the prosecuting agency for examination of additional witnesses, not sighted as prosecution witnesses, either in charge-sheet or supplementary charge-sheets, amidst the examination of charge-sheeted witnesses. Learned counsel for the petitioner has submitted that the petitioner is facing trial of a murder case since 1999 in which the prosecuting agency-C.B.I. has submitted charge-sheet as well as supplementary charge-sheets, sighting nearly 104 witnesses and during the course of trial has examined only 55 nearly witnesses. He has further submitted that it will be pertinent to state here that both the witnesses were neither mentioned as charge-sheet witnesses nor as supplementary charge-sheet witnesses nor even whispered to examine those Metropolitan Magistrates, namely (1) Sri Gurdeep Singh Saini and (2) Sri Shiv Charan, as required u/s 226 of the Code of Criminal Procedure. It has been further submitted that on the objection of the petitioner the learned court below directed the prosecution to supply clear copy of the statement recorded u/s 164 of the Code of Criminal Procedure by these two witnesses but the court below did not concede the demand of the petitioner regarding their examination after examining all the charge-sheet witnesses, as it

would not prejudice the case of the petitioner. He has relied on a decision of this Court reported in the case of Radhe Krishna Oil Mills Pvt. Ltd. Vs. State of Bihar in which it was held that examination of witnesses cannot be allowed only to fill up the lacuna in the prosecution case. It has been further held that this provision is only meant for just decision of the case and to summon only such witnesses who are vital for the case. The counsel for the C.B.I. has submitted that the examination of these witnesses are necessary for the end of justice.

2. Considering the submissions of the parties it is apparent that these two witnesses are not material witnesses but they are formal to prove the document for making them exhibits. As such their examination cannot be said to be filling up the lacuna by the prosecution.

3. The other submissions raised on behalf of the petitioner is that so long the charge-sheet witnesses are not examined the non-charge-sheet witnesses cannot be examined. No law has been produced in support of this submission. As such I do not find any merit in it. In view of above, this application is dismissed.