

(2009) 04 OHC CK 0087
In the Orissa High Court
Case No : Misc. Case No. 646 of 2009

Tikayat Routray and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 482

Citation : (2009) CLT 1133 (Suppl CrI)

Hon'ble Judges : S. Panda, J

Bench : Single Bench

Advocate : Sangam Kumar Sahoo, for the Appellant; Suraj Mohanty, A.S.C., for the Respondent

Judgement

S. Panda, J.—The Petitioners have filed this application u/s 482 Code of Criminal Procedure challenging the Order Dated 17.02.2009 passed by the Learned J.M.F.C., Kendrapara in G.R. Case No. 116 of 1995 rejecting the petition filed by them to recall the prosecution witnesses 1 to 5 & posting the case for accused statement.

2. From the records it appears that the Investigating Officer was examined on 6.8.2008 & on that date he was not cross-examined by the defence. The Learned J.M.F.C. passed an order on 3.10.2008 to recall the I.O. for cross-examination fixing the case to 3.11.2008 for evidence. The said I.O. was not present in the Court on the said date. Again he issued summons fixing the date to 26.12.2008. On 26.12.2008 the case was also adjourned. Thereafter, the case was adjourned on 2 to 3 occasions. Finally, on 17.02.2009 the Learned J.M.F.C. closed the evidence of the prosecution & posted the case to 20.02.2009 for accused statement.

3. Learned Counsel for the Petitioners submitted that though Petitioners filed an application u/s 311 Code of Criminal Procedure to recall the I.O., the Learned J.M.F.C. rejected the said application without giving an opportunity of cross-examination. If the defence could not cross-examine the said I.O., who is the

material witness, it would cause prejudice to them. Therefore, he prays to quash the said order. He has also filed a questionnaire to cross-examination the I.O. regarding seizure & contradictions of facts which is necessary for just decision of the case.

4. Section 311, Code of Criminal Procedure gives a power to the Court to summon a material witness or to examine a person present in Court or to recall a witness already examined. It confers a wide discretion on the Court to act as the exigencies of justice require. The object of the Section is to enable the Court to arrive at the truth. The test of "just decision" is not limited to something necessary in the present of the accused only. It may equally benefit the prosecution. The Court is not to act as a silent spectator and act mechanically. It has a duty to see that justice is done. The Court has to see that a guilty person does not go unpunished, or an innocent person gets punished.

5. Considering the aforesaid position of law and for the interest of justice this Court sets aside the Order Dated 17.02.2009 passed by the Learned J.M.F.C., Kendrapara in G.R. Case No. 116 of 1995 and directs the Learned J.M.F.C. to issue summons to the I.O. for cross-examination by the defence.

6. A copy of the questionnaire shall be produced in the Court of Learned J.M.F.C., Kendrapara. The defence will cross-examine the said I.O. only to the extent of the said questionnaire. After cross-examination of the I.O., the Learned J.M.F.C. shall close the evidence of the case.

7. The Criminal Misc. Case is accordingly disposed of.

8. Appeal disposed of.