

IN THE HIGH COURT OF JUDICATURE AT PATNA  
CR.MISC. NO.44289 OF 2008

1. CHANDRA SEKHAR PRASAD, SON OF NARAYAN MAHTO  
2. NARAYAN MAHTO, SON OF LATE KARU MAHTO  
BOTH RESIDENT OF VILLAGE AJAYPUR TOLA RAMPUR, POLICE STATION  
CHANDI, DISTRICT NALANDA

.....**PETITIONERS**

VERSUS

1. THE STATE OF BIHAR  
2. SHRI YADUNANDAN PRASAD, SON OF LATE BHATU MAHTO, RESIDENT  
OF VILLAGE YODHAN BIGHA, POLICE STATION BELCHHHI, DISTRICT  
PATNA

.....**OPPOSITE PARTIES**

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**2**

**29/07/2011**

Heard Counsel for the petitioners and the

A.P.P. appearing on behalf of the State.

The petitioner is aggrieved by the order dated 25.09.2008 passed in Sessions Trial No. 703 of 2006 by which the 2<sup>nd</sup> Additional Sessions Judge, Hilsa, Nalanda has rejected the application filed on behalf of the petitioners under Section 233 of the Code of Criminal Procedure on the ground that it has been filed to delay the trial.

Learned Counsel for the petitioners submits that the prosecution case was closed on 19.09.2008. The petitioners filed the application under Section 233 of the Code of Criminal Procedure on 24.09.2008 i.e. just five days after the closure of the prosecution evidence.

Section 233 of the Code of Criminal Procedure reads as follows:-

**233. Entering upon defence.-**

(1) Where the accused is not acquitted under Section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thin, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice."

The circumstances aforesaid do not led this Court to conclude that the petitioners have filed the application after a delay and at a belated stage rather it was done almost immediately after the prosecution evidence was closed. Taking into account the facts aforesaid, I do not think that the impugned order is justified.

Accordingly, I quash the impugned order and remand the matter back to the 2<sup>nd</sup> Additional Sessions Judge, Hilsa, Nalanda to hear afresh both the parties and pass an order in accordance with law and according to

the observations made aforesaid within a period of two months from the date of receipt/production of a copy of this order before him. This order is being passed subject to the fact that the trial has not commenced in this case.

Counsel for the petitioners is directed to produce a copy of this order before the Trial Court within a period of one month from today, failing which this application shall stand dismissed.

There should be no difficulty in securing the attendance of the Opposite Party No. 2/informant as he must be appearing everyday as the case is ready for trial.

This application is allowed to the extent indicated aforesaid.

**Anand**

**( Sheema Ali Khan, J.)**