

**In the Court of Motish Kumar Singh Sessions Judge, Siwan.
Criminal Revision No. 264/2025**

**Satyendra Singh.....Revisionist
Vs.
The State of Bihar & Amrendra Kumar O.Ps**

ORDER

10.03.2026

Present: Ld. Counsel for the revisionist/petitioner, Ld. P.P as well as Ld. Counsel for State/respondent.

1. By way of filing present revision petition, the revisionist/petitioner has assailed the impugned order dated 16.10.2025 passed by Sri Ajeyndra Kumar Mishra, Ld. J.M.F.C, Siwan in Trial no. 1554/2025.

2. Ld. Counsel for petitioner submits that the order of the learned court below is without jurisdiction. Ld. court below did not appreciate the submissions of accused-petitioner and did not apply judicial mind and also difference between section 243(1) Cr.P.C and 243(2) Cr.P.C. Ld counsel further submits that as the defence is producing the witnesses at his own instance, so there is no question to make any prayer for issuance of summons by the court and all the defence witnesses have been examined in compliance of section 243(1) of Cr.P.C. It also appears that there is no provision for closing the evidence. Ld. counsel further submits that there is no question of examination of charge-sheeted witnesses because charge-sheeted witnesses generally and mostly be examined by prosecution, not by defence. Thus, Ld. counsel prays that impugned order dated 16.10.2025 may be set-aside and to stay the operation of the order dated 16.10.2025 till the disposal of this revision.

3. On the other hand, Ld. P.P as well as Ld. Counsel for State/respondent vehemently oppose the present revision petition.

4. Heard. Perused the record.

5. From perusal of record, it transpires that learned judicial magistrate *vide* impugned order has held that since all three witnesses examined by

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defence was not charge-sheeted witnesses and therefore the same was declared by judicial magistrate as improper evidence. It was further held by judicial magistrate that it was obligatory for the defence to make an application before learned trial court for compelling attendance of a defence witness and that the defence was also required to deposit diet money for defraying the expenses of witnesses. In this regard, this court is of the view that filing an application for securing presence of defence witnesses is not a mandatory u/s 243 of Cr.P.C. However the same can be invoked by defence in a suitable cases where he wants to examine a witness, but witness is not ready to come to the court to depose on his own. In such a situation defence can make an application under the provisions of Section 243 Cr.P.C.

6. As submitted by learned counsel for revisionist/petitioner that he has already examined three witnesses, therefore there was no occasion to compel presence of his witness. The presence may be secured by defence itself.

7. The finding of learned trial court that the defence evidence, oral or documentary, primary or secondary was improper, also does not stand scrutiny of law. In view of the aforesaid discussions, the entire impugned order suffers illegality and infirmity.

8. Therefore, in the premise of aforesaid, the present revision petition is **allowed** and the impugned order dated 16.10.2025 is hereby **set-aside**. However, since this court *vide* order dated 28.03.2024 passed in Criminal revision no. 126/2017 had given six months time to learned trial court to conclude the trial of this case and the aforesaid time has already elapsed, therefore, accused is directed to examine all his remaining witnesses

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positively within one month from today after immediately filing a list of remaining witness before learned trial court. Thereafter, one more month is granted to the accused/petitioner for producing documentary evidence, if any. Immediately thereafter, the defence evidence shall be closed. The learned trial court is directed to finally decide this case positively within one month after closing of defence evidence, preferably listing this case every week; or if possible, on day to day basis.

9. The office is directed to send back lower court record with one copy of this order to the Ld. court below.

(Dictated)

(Motish Kumar Singh)
Sessions Judge, Siwan.
10.03.2026