

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1394 of 2015

Arising Out of PS.Case No. -138 Year- 2009 Thana -BIHRA District- SAHARSA

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1. Suresh Roy @ Sailesh Roy son of Late Jawahar Roy
 2. Nunu roy @ Rakes Roy, son of Late Jawahar Roy
 3. Rupesh Roy, son of Late Jawahar Roy
All resident of village-Kataiya, P.S.-Bihra, District-Saharsa.
 4. Ranjeet Yadav, son of Late Bhupendra Yadav, resident of village-Khajuri, Op.P.-Bajinathpur, District-Saharsa.
 5. Sushil Roy, son of Late Khalari Roy, resident of village-Kataiya, P.S.-Bihra, District-Saharsa.
 6. Chandrakant Jha @ Tipu Jha, son of Madan Jha, resident of Gangjala, P.S. + District-Saharsa.

.... Petitioner/s

Versus

1. State of Bihar
2. Manoj Kumar Yadav, son of Laxmi Narain Yadav, resident of village-Kataiya, P.O.-Sattar Katiya, P.S.-Bihra, District-Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shiva Shankar Sharma, Advocate
For the Opposite Party/s : Dr. Mayanand Jha(App)

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH**

ORAL ORDER

2 03-09-2015 In the present application, filed under Section 482 of the Code of Criminal Procedure, the petitioners seek quashing of the order dated 21.12.2012/17.7.2014 passed in Bihra P.S. Case No. 138 of 2009 by the learned Judicial Magistrate, Ist Class, Saharsa, whereby he has condoned the limitation in exercise of power conferred under Section 473 of the Code of Criminal Procedure and taken cognizance of the offence punishable under Sections 147, 149, 323 and 504 of the Indian Penal Code.

The petitioners were made accused in Bihra P.S. Case



no. 138 of 2009 registered under Sections 147, 148, 149, 323 and 307 of the Indian Penal Code and Section 27 of the Arms Act. After completion of the investigation the police submitted chargesheet no. 3/2012 dated 12.12.2012 against the petitioners for the offence under Sections 147, 149, 323 and 504 of the Indian Penal Code before the learned Magistrate, who took cognizance of the offences on 17.7.2014.

It is contended that the learned Magistrate while taking cognizance has waived the limitation in a casual manner without assigning any reason. It is further pointed out that the offences under which cognizance has been taken are exclusively triable by Gram Kachhari and it was duty of the Magistrate to cancel the jurisdiction of the Gram Kachhari first and then to proceed with the case.

Learned counsel for the State has opposed the prayer made by the learned counsel for the petitioners. He has submitted that apparently the chargesheet was filed before the Court within three years and since then the matter remained pending before the Magistrate concerned, who took cognizance of the offences on 17.7.2014 after condoning the delay for taking of the cognizance. He has further contended that the contention of the learned counsel for the petitioners that the jurisdiction of the Gram

Kachhari ought to have been cancelled first does not hold good, in view of the fact that by a composit order the learned Magistrate had cancelled the jurisdiction of the Gram Kachhari and taken cognizance of the offences.

I have heard the learned counsel for the parties and perused the record. I find substance in the argument advanced by the learned counsel for the State. The investigation of the case was completed and chargesheet was filed before the court on 12.12.2012 itself. For one reason or another, the record was not put up before the learned Magistrate concerned till 17.7.2014, the date on which he took up the matter, cancelled the jurisdiction of the Gram Kachhari and proceeded with the case after taking cognizance of the offences and issued summons against the petitioners.

The application being devoid of any merit is dismissed.

(Ashwani Kumar Singh, J)

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