

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18457 of 2015

Arising Out of Complaint Case No. -543 Year- 2013 District-
VAISHALI(HAJIPUR)

=====

Punam Devi W/o Suryadeo Bhagat, Resident of Village- Karnpura, P.S.- Ganga
Bridge , District- Vaishali.'

.... Petitioner

Versus

1. The State of Bihar null null
2. Rehana Khatoon, W/o Sri Safi Alam Resident of Village- Karnpura, P.S.-
Ganga Bridge , District- Vaishali.'

.... Opposite Parties.

=====

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar No. 1, Adv.

For the Opposite Party no.2 : Mr. Praveen Kumar

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 22-07-2015

Heard learned counsel for the petitioner as well as learned
Additional Public Prosecutor.

Counter affidavit has been filed on behalf of opposite party
no. 2. Let it be taken on record.

Petitioner who, though figured as an accused in the
complaint petition was not summoned by the learned lower Court in
terms of Section 204 Cr.P.C. Whereupon, complainant/opposite party
no. 2 filed Cr. Revision No. 167 of 2013 and the same was decided by
the learned Additional Sessions Judge, IV, Vaishali at Hajipur vide
order dated 2.12.2014 observing that from the materials having
produced at the behest of complainant during the course of enquiry

apart from this has justified presence of Section 307 as well as 386 of the IPC. It has also been perceived by the revisional Court with regard to prima facie involvement of the accused no. 2/petitioner Punam Devi and in the aforesaid background, the learned revisional Court observed;

“ Hence on the basis of the aforesaid discussions and under the circumstances, the learned court below is advised to make fresh order after re-appreciating the evidence on record and passed fresh order in accordance with law and accordingly the instant criminal Revision is partly allowed with the aforesaid observation.”

Annexure-4 is the revision petition having been filed by opposite party no. 2 before the learned Sessions Judge, Vaishali at Hajipur. After perusal of the same, it is apparent that the petitioner, even though at that very moment was proposed accused, was not made party that means to say the order impugned has been passed in her absence. The nature of the order suggests infelicitous to her interest apart from the fact that same has been passed in her absence and on account thereof there happens to be violation of natural justice, whereunder, no order could be passed against a person without hearing him. That happens to be reason behind present specific provision under Section 401(2) Cr.P.C. which speaks firmly that no

order pre-judiced to accused could be passed unless he has been afforded an opportunity to be heard. The Hon'ble Apex Court has taken the aforesaid view in *Bal Manohar Jalan vs. Sunil Paswan & another* reported in *2014(3) PLJR 137 (SC)* replying upon earlier judgment *Manharibhai Muljibhai Kakadia & another vs. Shaileshbhai Mohanbhai Patel & others* reported in *(2012) 10 SCC 517*.

Learned counsel for opposite party no. 2 submitted that because of the fact that the petitioner is yet to come on record and on account thereof, she has got no legal right to file instant petition. The aforesaid plea has got no legal recognition in the background of consistent judicial pronouncement held by the Hon'ble Apex Court as reported above.

Consequent thereupon, the order impugned dated 2.12.2014 passed by Additional Sessions Judge-IV, Vaishali at Hajipur in Cr. Revision No. 167 of 2013 is set aside. The petition is allowed.

However, it will be open for the complainant to pursue the matter afresh in accordance with law, if she so desires.

(Aditya Kumar Trivedi, J)

Kanchan/-

U		T	
---	--	---	--