

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.13023 of 2012

- =====
1. Jai Prasad Rai @ Jay Pd. Rai son of Achhelal Rai
 2. Binod Rai son of Mukhlal Rai
 3. Kapildeo Rai, son of Jhukru Rai
 4. Wakil Rai son of Ram Sanchi Rai
 5. Rajinan Rai, son of Ramanand Rai

All are residents of village-Fazilpur, P.S. Rajepur, District-East Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Yogendra Baitha, S/o Kishuni Baitha, resident of village-Fazilpur, P.S. Rajepur, District-East Champaran

.... Opposite Party/s

=====

Appearance:

For the Petitioner/s : Mr. Sunil Kumar No. III, Advocate

For the Opposite Party/s : Mr. Bharat Lal (APP)

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL ORDER

7 15-04-2015 Heard the parties.

This matter was heard on 10.04.2012 when the counsel for the petitioners was granted leave to add the informant as opposite party no. 2 and notice was issued to him but it was informed that the opposite party did not reside at the address given by the petitioner which is address of the informant given in the FIR placed at Annexure-1 to the application.

The petitioners are aggrieved by the order dated 30.06.2011 passed by the 1st Additional District and Sessions Judge, East Champaran at Motihari in Trial No. 22 of 1995 arising from Rajepur P.S. Case No. 33 of 1984 registered for offences punishable under Sections 447, 447, 427 and 323 of the Indian

Penal Code, whereby the learned Judge has been pleased to issue process against the petitioners under Sections 82 and 83 of the Code of Criminal Procedure.

Mr. Sunil Kumar No. III, learned counsel appearing for the petitioners with reference to the FIR placed at Annexure-1 has submitted that the FIR was instituted alleging minor offences. It is submitted that though the offences are triable by a Magistrate but for unknown reasons the records were transferred to the Court of learned Additional Sessions Judge-Special Judge (SC/ST) in the light of Memo No. 2308-34 dated 27.05.1991 even when no offence punishable under the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the SC/CT Act') had been made out by the informant. It is submitted that the Additional Sessions Judge-cum-Special Judge (SC/ST) realizing such position returned the records to the court of the Chief Judicial Magistrate, East Champaran at Motihari on 16.3.1992 and whereafter it was transferred to the court of Sub-Divisional Judicial Magistrate, Sikrahana, East Champaran at Motihari on 23.3.1992.

It is the grievance of the petitioners that again for unknown reasons the records were transferred by the Sub-Divisional Judicial Magistrate to the court of 1st Additional

District and Sessions Judge, East Champaran at Motihari on 6.6.1995 in the light of Memo No. 625-27 dated 3.6.1995 and was received in the transferee court on 14.6.1995.

It is the case of the petitioners that on 11.10.2011 a petition was moved before the 1st Additional District and Sessions Judge, East Champaran at Motihari drawing his attention towards the fact that there was no material on record to constitute any offence under 'the SC/ST Act' and hence the records be remitted to the court of Magistrate, however, no order was passed despite the fact that cognizance in the matter were taken only of the offences punishable under Sections 147, 447, 427 and 323 of the Indian Penal Code on 25.5.1987 which are triable by a Magistrate but in the meantime the impugned order was passed on 30.6.2011.

It is considering the arguments advanced on behalf of the petitioners that this Court vide order passed on 10.4.2012 while requiring the counsel for the petitioners to arraign the informant as a party also called for a report from the District and Sessions Judge as to the circumstances under which the records in the present matter lies before the Court of Additional Sessions Judge when the offences alleged are triable by Magistrate. The operation of the order passed by the Additional District and Sessions Judge dated 30.6.2011 was stayed by the same order.



The matter thereafter being considered on several dates by different Benches was put up before this Court on 11.3.2015 when this Court noticed that the order dated 10.4.2012 of this Court had not been complied by the District and Sessions Judge and the report was found wanting. This Court vide order passed on 11.3.2015 issued directions for urgent reminder to the District and Sessions Judge, East Champaran to submit his report in the light of the order passed on 10.4.2012 and which has since been received alongwith a report of the 1st Additional District and Sessions Judge, East Champaran bearing letter no. 300 dated 20.3.2015. By the said letter the 1st Additional District and Sessions Judge has admitted to the grievance raised by the petitioner in this application regarding the matter not being triable by a court of sessions rather it is candidly accepted that it transpired from the records that cognizance have been taken of the offences triable by a Magistrate and not by the Sessions Court. It is in consideration of such circumstances that the records have been remitted to the court of Sub-Divisional Judicial Magistrate, Sikarhana for its trial and disposal. The aforementioned aspects are a clear reflection of the fact that the order impugned dated 30.6.2011 passed by the 1st Additional District Judge, East Champaran at Motihari in Trial No. 22 of 1995 arising from

Rajepur P.S. Case No. 33 of 1984 whereby process had been issued as against these petitioners under Sections 82 and 83 of the Code of Criminal Procedure was an unwarranted exercise by the Sessions Court. The learned Additional District and Sessions Judge having realized the mistake and having transmitted the records of the case to the appellate court, it would be a completion formality for this Court to hold that the order dated 30.6.2011 passed by the 1st Additional Sessions Judge, Motihari in Trial No. 22 of 1995 as impugned in this application is unsustainable and it is accordingly set aside.

This application is allowed.

(Jyoti Saran, J)

S.Sb/-

U			
---	--	--	--