

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51029 of 2014

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Mahanth Prem Das Disciple of late Mahanth Sandhya Das, Mahanth of Bhabhauri Udasin Math, P.S.- Manjhi, District- Saran (Chapra)

.... Petitioner/s

Versus

1. The State of Bihar
2. Rabindra Mishra, Son of Shivjee Mishra
3. Akhileshwar Mishra, son of Shivjee Mishra
4. Shailesh Mishra, son of Shivjee Mishra 2 to 4 are resident of village- Majhwaliya, P.S.- Manjhi, District- Saran (Chapra)

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra

For the Opposite Party/s : Mr. Ram Chandra Sahni (App)

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

2 29-07-2015 Heard Mr. Mishra in support of Cr. Misc. No.51029 of 2014 which seeks restoration of Cr. Misc. No. 10172 of 2013.

No one appears on behalf of the State.

For the reasons stated in the restoration application the same is allowed. Cr. Misc. No. 10172 of 2013 is restored to its original file and number.

Cr. Misc. No.10172 of 2013

The Court permitted the petitioner to make submissions on merit of Cr. Misc. No. 10172 of 2013. Mr. Mishra advanced his submission in support of the application which has been filed to quash the order dated 09.01.2013 passed by the learned 1st Addl. Sessions Judge, Saran in Criminal Revision No. 18 of 2012 which

has been disposed of observing as under:-

“Considering the facts and circumstances, nature of evidence it will be better to consider the matter at the stage of evidence and charge and the same may be framed. The petitioners have opportunity to raise this matter before the trial court at the time of framing of charge under aforesaid sections. Since there is no jurisdictional error except some misplacing and same may be looked at the proper stage. With this observation revision petition is disposed of and the trial court is directed to consider the matter at the proper stage of the case that if there is any warrant trial case or sessions case then he may proceed according to law as prima facie shows in evidence. Accordingly the revision petition is disposed of.”

It has been submitted that the police in collusion with the accused submitted the charge sheet under minor sections, although there is legal materials against the opposite party. In such circumstances, the complainant filed protest-cum-complaint petition which was treated as Complaint Case No. C1045 of 2010 wherein after making enquiry into the complaint by permitting the complainant to lead evidence the learned Chief Judicial Magistrate found that prima facie case has been made out under sections 341,323 and 504 IPC only and summons were

issued. Aggrieved thereagainst the revision was filed which was disposed of in the aforesaid terms.

It has not been disputed by Mr. Mishra that party has right to argue before the court for framing of charges under the relevant sections if there is evidence/material on record justifying the same. The said stage has not as yet reached. The learned Sessions Judge, thus, has rightly granted the said liberty to the petitioner in the impugned order.

Taking into account the aforesaid fact this Court finds no patent illegality in the order to invoke discretionary jurisdiction conferred under section 482 Cr. P.C. The prayer is fit to be dismissed.

The petitioner, if so advised, may utilize the said observation/liberty granted by the learned revisional court.

The application is dismissed.

(Kishore Kumar Mandal, J)

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