

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50595 of 2008

Arising Out of PS.Case No. -0 Year- null Thana -null District- EASTCHAMPARAN(MOTIHARI)

1. Kanchan Devi wife of late Bengali Kumar, resident of Mohalla Koeria Tola, Main road Raxaul, P.S. and Town Raxaul, District East Champaran
2. Chandrakanti Singh wife of late Thakur Manoranjan Singh, resident of village Mahuaria, P.S. Sheohar, Distt. Sheohar
3. Bimla Singh wife of Birendra Kumar Singh
4. Indu Singh wife of Sri Upendra Kumar Singh, both residents of Mohalla Dahiawan Tola, Chhapra, District Saran
5. Laxmi Singh wife of Dr. Akhilesh Kumar Singh, resident of Mohalla Naya Tola, P.S. Town and District Muzaffarpur
6. Niteshwar Rao son of late Bachha Rao, resident of village Mathia, P.O. + P.S. Lauria, Distt. East Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Dr. Brij Kishore Kumar son of late Bengali Kumar
3. Nitesh Kumar
4. Vikash Kumar, sons of Dr.. Braj Kishore Kumar, all resident of Mohalla Koeria tola, Main road, Raxaul, Distt. East Champaran

.... Opposite Party/s

with

Criminal Miscellaneous No. 51372 of 2008

Arising Out of PS.Case No. -0 Year- null Thana -null District- EASTCHAMPARAN(MOTIHARI)

1. Chandra Kishore Kumar son of late Dr. Bewngali Kumar
2. Rohit Kumar
3. Rahul Kumar, sons of Chandra Kishore Kumar, all residents of Mohalla Koeria tola, Main road, Raxaul, P.S. and Town Raxaul, Distt. East Champaran

.... Petitioner/s

Versus

1. State of Bihar
2. Dr. Brij Kishore Kumar son of late Bengali Kumar
3. Nitesh Kumar
4. Vikash Kumar, sons of Dr. Braj Kishore Kumar, all resident of Mohalla Koeria tola, Main road, Raxaul, Distt. East Champaran

.... Opposite Party/s

Appearance :

(In Cr.Misc. No. 50595 of 2008 and Cr.Misc.No.51372 of 2008))

For the Petitioner/s : Mr. Rajendra Narain Sinha, Sr. Advocate
Ms. Anju Narain, Advocate

For the Opposite Party/s : Mr. C. Jawahar, APP

For private Opposite Parties : Mr. Sarvesh Kumar Singh, Advocate

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 07-07-2015

The Petitioners seek quashing of the entire proceeding including the order of cognizance dated 8.11.2008 passed by the Chief Judicial Magistrate, Motihari, East Champaran in Complaint case No.0C-209 of 2008.

The background facts are that a Title Suit was going on before the Sub Judge, Motihari. A preliminary decree was prepared as against which the Opposite Parties No.2, 3 and 4 preferred an appeal. In the said first appeal both, the appellants and the Petitioners filed a substitution petition with regard to one of the respondents giving two different dates of death. The same was allowed without going into the exact date of death. At the stage of final decree when substitution of the same defendant was sought, a dispute arose with regard to his date of death and then the court below was of the view that since the Petitioners had given a date, which was not correct, they should be prosecuted under the provisions of Section 195 Cr.P.C.

It has been submitted on behalf of the Petitioners that even conceding the allegations since no benefit accrued to the Petitioners for having given a date which was incorrect, the prosecution be set aside. Moreover the Petitioners did not file any petition in regard to date of death before the court below but it was done before this Hon'ble Court which accepted the substitution

without going into the details of the date.

On the other hand, the Counsel for the Opposite Parties No.2, 3 and 4 has vehemently opposed and submits that since the Petitioners had given a wrong date of death, they should be prosecuted.

I find that admittedly no benefit had accrued to the Petitioners by giving a date of death which was incorrect, hence it is not wise to deduce that it was to mislead the Court that it was done. Hence, both the applications are allowed and the entire proceeding including the order of cognizance dated 8.11.2008 passed by the Chief Judicial Magistrate, Motihari, East Champaran in Complaint case No.0C-209 of 2008 is hereby set aside.

However, this order shall not prejudice any party in any manner.

(Anjana Prakash, J)

Narendra/-

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