

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8216 of 2013

Arising Out of PS.Case No. -178 Year- 2005 Thana -EAST CHAMPARAN COMPLAINT District-
EASTCHAMPARAN(MOTIHARI)

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1. Radheshyam Prasad Yadav S/O Late Rekha Rai Resident Of Village-
Dharhari, Police Station- Chiraiya, District- East Champaran

.... Petitioner

Versus

1. The State Of Bihar

2. Jai Narayan Rai S/O Late Sita Ram Rai Resident Of Village- Mahuahi
Mushidabad, Police Station- Ghorsahan, District- East Champaran

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Sanjay Kumar, Advocate

For the Opposite Parties : Mr. Suresh Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

5 09-07-2015 Heard the learned counsel for the
petitioner and the State.

This is a petition for quashing the order taking cognizance under Section 498A of the Penal Code by order, dated 06.01.2010.

The learned counsel for the petitioner, however, contends that the victim died on 27.08.2002 though the complaint was filed on 05.04.2005, hence, there is limitation of three years. It has, further, been contended that the cognizance has been taken after the death of the victim.

However, from the perusal of the record, it appears that a complaint was filed under Sections 498A/304B/201 of the Penal Code on 05.04.2005 alleging therein that the petitioner was married with



Indu Devi on 21.05.1999 as per Hindu rites and at the time of marriage there was demand of motorcycle and the daughter of informant pressurized for purchase of a motorcycle and she was also tortured and so the daughter had come to the complainant and disclosed about the demand. Subsequently she was blessed with a female child, but, the demand continue and when the complainant went to meet his daughter, he was not allowed to meet her and again a demand of Rs.25,000/- was made and lastly the informant came to know that his daughter has been done to death and the dead body was disposed off. A complaint filed which was registered on 05.04.2005. By order, dated 05.04.2005, itself, it was ordered that since the case has been filed for offence under Sections 498A, 304B and 201 of the Penal Code, which requires investigation, hence, the case be forwarded to the Officer-in-Charge, Chiraiya Police Station, West Champaran at Bettiah, for lodging first information report under Section 156(3) of the Penal Code and investigation of the case. The matter remained pending though no intimation of lodging the first information report received and, thereafter, it appears from the order sheet, that a report was called for from the G.R. Clerk on 22.08.2005.

A petition was filed on behalf of the complainant to dispose off the case and a report was



called for from the G.R. Office as to whether first information report has been instituted or not under Section 156(3) of the Criminal Procedure Code. The report of the G.R. Clerk, dated 28.09.2005, that first information report has not been received as yet, as apparent from the endorsement in the margin of the order and. But, the order, dated 28.09.2005, mentions that it has been ordered "seen the report of the G.R. Clerk, as the report case has not been instituted as yet, hence, as per the order institution of the first information report is hereby recalled, record is kept for enquiry under Section 192 of the Criminal Procedure Code". Thereafter, case proceeded on complaint and on recording statement of complainant on solemn affirmation and recording statements of witnesses, cognizance has been taken by the order, impugned, for offence under Section 498A of the Penal Code.

However, having regard to the fact that when once one a complaint an order passed by Magistrate for institution of the case under Section 156(3) of the Criminal Procedure Code for offences under Sections 498A, 304B and 201 of the Penal Code, then can the order be recalled by the Magistrate and proceed on complaint to take cognizance.

Hence, the question for consideration whether after passing an order for institution of a

case under Section 156(3) of the Criminal Procedure Code on a complaint whether a Magistrate can recall his order and proceed on a complaint.

However, it is well settled that the recalling of order amounts to review of the earlier order by which order passed to institute a case under Section 156(3) of the Criminal Procedure Code. However, a criminal Court has no jurisdiction to review it's own order, once order has been passed for lodging a case and instituting a first information report and investigation, then, it is not proper for the Magistrate to recall the order and proceed in accordance with the complaint to take cognizance on the basis seeking enquiry or trial.

Hence, the entire proceeding on the complaint on recall and taking statements of complainant and the witnesses the order taking cognizance on the basis of such enquiry is not sustainable in law and, hence, order taking cognizance in complaint is not sustainable and hereby set aside.

The new point raised that the order taking cognizance is barred by limitation as the cognizance has been taken after five years is not sustainable, in view of decision reported in **(2014) 2 S.C.C., 62 (Sara Mathew Vrs. Institute of Cardio Vascular Diseases by it's Director Dr. K.M. Cherian & Ors.)** and limitation shall run from the date of the

occurrence till the filing of the complaint and not from the date of taking cognizance. Hence, there is no merit in the submission that the order taking cognizance is barred by limitation.

However, having regard to the fact that the cognizance taken on complaint, recalling the order for institution of first information report under Section 156(3) of the Criminal Procedure Code the impugned order taking cognizance is not sustainable and is hereby set aside as the learned Magistrate had no power to recall or review his own order.

With these observations and directions, this petition is **allowed**.

(Gopal Prasad, J)

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