

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40347 of 2012

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1. Sunil Kumar son of Indradeo Ram
2. Mithlesh Kumar @ Mithlesh Ram, son of Late Ram Ashish Ram
3. Ram Layak Kumar Das son of Late Chandradeo Ram
4. Ram Pravesh Das @ Ram Prevesh Ram, son of Late Chandradeo Ram
5. Nehal Kumar Das alias Nehal Kumar, son of Late Chandradeo Ram
6. Lalita Ram alias Lalita Ram, son of Late Chandradeo Ram
7. Anil Kumar son of Indradeo Ram
8. Indradeo Ram, son of Late Balkeshwar Ram,
All residents of Village- Kundwa, P.S. Brun, District- Aurangabad.
..... Petitioner/s

Versus

1. State of Bihar
2. Ram Ashish Ram son of Late Bhuleltan Ram, resident of Village-
Mangrahiya, P.O.Barauli, P.S. Barun, District- Aurangabad, presently
Posted as Account, Minor Irrigation Division, Jhajha, District- Jamui.
..... Opposite Party/s

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Appearance :

For the Petitioner/s : Sanjay Kumar, Advocate
For the State : Mr. Vinod Shankar Modi (APP)
For O.P. : Mr. Krishna Prasad Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

8 22-07-2015 Heard learned counsel for the petitioners as well as
learned Opposite Party along with learned APP.

There happens to be controversy with regard to petitioner
no.2 Mithlesh Kumar @ Mithlesh Ram who has been arrayed as
an accused and stand at serial no.8 of the complainant petition
having proper identification as “Mithlesh Ram aged about 26
years, son of Late Ram Ashish Ram of Village Kundwa, P.S.
Barun, District Aurangabad, Bihar”, while in the instant petition,
aforesaid Mithlesh Ram has claimed to be son of
complaint/O.P.No.2 and on account thereof, counter affidavit has
been filed on behalf of O.P.No.2/complainant, wherein at para-4,
it has been disclosed that first wife of O.P.No.2 had left him in the
year 1972 and at that time, she had no issue. At para-3 of the



aforesaid counter affidavit, it has also been incorporated that; “that in fact Mithlesh Ram is not son of O.P.No.2 but his father name is Late Rama Ashish Ram who is resident of Village Pali, Dehri-on-Sone, district Rohtas but later as residing at village-Kundwa, P.S. Barun, District Aurangabad”. It is also apparent from Annexure-2 that one Tetri Devi claiming herself to be the wife of O.P.No.2/complainant Ram Ashish Ram, had filed complaint petition under section 498A along with allied sections of the IPC and learned counsel for O.P.No.2 fairly concedes that his client is accused under Annexure-2. It has also been admitted at the end of learned counsel for the O.P.No.2 that one maintenance case is also going on.

It has been submitted on behalf of O.P.No.2 that accused Mithlesh Ram has migrated from Village Pali to Kudwa and is residing at Village Kundwa for the present. It has also been submitted that sufficient time be given for collecting evidence with regard to residence of this Mithlesh Ram.

Learned counsel for the petitioners submitted that there happens to be specific averment in the pleading that Mithlesh Ram is son of the complainant/O.P.No.2 and in the likewise manner, petitioner no.8 Indradeo Ram is the brother-in-law of O.P.No.2/complainant and on account of the dispute in between the spouse, this case has purposely been filed to pressurize Tetri Devi to give up in prosecuting the instant case (Annexure-2) as well as maintenance case in the back ground of the fact that Ram Ashish Ram complainant/O.P.No.2 happens to be a Govt. servant.

Present petition happens to be for quashing of the order of cognizance. It is not a trial wherein party should be given an opportunity to collect the evidence and place before the court

whether it happens to be admissible or inadmissible in the eye of law. It was incumbent upon the complainant itself to have disclosed the affair, more particularly, in the back ground of the fact that save and except petitioner Mithlesh Ram, others have been properly dealt with address. Now coming to Mithlesh Ram, it was incumbent upon the complainant to have placed the real fact and then would have placed relevant documents during course of an inquiry in the back ground of the fact that whenever accused happens to be of the outside of the jurisdiction of the court, the court itself is under obligation to proceed with the inquiry in terms of Section 202 of the Cr.P.C. which has not properly been done as has been held by the Honorable Apex Court in Udai Shankar Awasthi Vs. State of U.P. & another reported in (2013) 2 SCC 435.

That being so, the order impugned dated 22.6.2012 passed in Complaint Case Nio.334 of 2012/Misc.156 of 2012 is set aside.

Petition is allowed.

However, it will be opened to the O.P.No.2 to proceed afresh, if he so desires subject to embargo, if any, so applicable.

(Aditya Kumar Trivedi, J)

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