

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31005 of 2012

- =====
1. Kamo Devi W/O Brahamdeo Yadav @ Kapildeo Yadav Resident Of Village- Domodih, Police Station- Fulidumar, District- Banka
 2. Brahamdeo Yadav @ Kapildeo Yadav S/O Late Manik Lal Prasad Yadav Resident Of Village- Domodih, Police Station- Fulidumar, District- Banka
 3. Mritunjai Kumar Yadav @ Mritunjai Kumar @ Jai Kumar Yadav S/O Brahamdeo Yadav @ Kapildeo Yadav Resident Of Village- Domodih, Police Station- Fulidumar, District- Banka
 4. Ranjeet Yadav S/O Late Ambika Yadav Resident Of Village- Pain (Pine), Police Station- Sultanganj, District- Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Udhav Yadav S/O Late Munilal Yadav Resident Of Village- Domodih, Police Station- Fulidumar, District- Banka

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Rajesh Kumar

For the Opposite Party/s : Mr. Nasim Yahiya(App)

=====

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

3 09-04-2015 Heard.

The present petition has been filed challenging the order dated 26.06.2010 by which the learned Chief Judicial Magistrate, Banka was directed to proceed as per law in the light of the observations made by the learned Additional Sessions Judge-cum-Presiding Officer, Fast Track Court No.V, Banka in Cr.Revision No.12 of 2010.

The point agitated before this Court is very limited.

Submission is that in the above said Cr.Revision No.12 of 2010 the petitioners had not been impleaded as parties as was

required by Section 401(2) Cr.P.C.

It appears that the police had investigated, initially the FIR and had recorded the case not true and had further filed a complaint petition for the prosecution of the informant for offences under Sections 182 and 211 Indian Penal Code. However, the informant had filed a protest petition-cum-complaint and that was taken up for hearing and that was dismissed under Section 203 Cr.P.C. That order of dismissal was challenged before the court below and the impugned order dated 22.06.2010 was passed. Certain observations as regards the constitution of an offence under Section 364/34 Indian Penal Code had been made.

The learned counsel for the respondent-complainant has also appeared and he has also submitted that in the light of the provisions of Section 401(2) Cr.P.C. no order under this Sections shall be made to the prejudice of the accused or other persons unless he has an opportunity of being heard either personally or by a pleader in his own defence.

It may be pointed out that the powers of revision conferred upon the High Court under Section 401 Cr.P.C. are also exercisable by the Court of Sessions as per Section 399 Cr.P.C. and that expressly provides that all powers contained under Section 401 Cr.P.C. may be exercised by the Court of Sessions.



Undisputedly the petitioners were not impleaded as Opposite Parties in the Cr.Revision petition in which the impugned order was passed. It may be that the petitioners were not accused, but the two words “the accused or other persons” expands the scope of that part of Section 401 to cover a person who could be prospectively summoned as an accused by any Court. Considering that part of the provision, it appears a mandate of law that the order ought not have been passed by the learned Presiding Officer of Fast Track Court No.V, Banka.

In the result, the petition succeeds and the order dated 26.06.2010 is hereby quashed.

However, the court below is directed to implead the petitioners as parties who shall appear in the court below as they have filed this petition even without a notice being issued them individually and then participate in the hearing of Cr.Revision No.12 of 2010 which shall be restored to its original number and file for fresh hearing. If any order of summoning or cognizance has been passed by any Court that shall deem to have been quashed in the light of the present order and no steps shall be taken by the Court of Magistrate in pursuance to an order of summoning or cognizance order unless Cr.Revision No.12 of 2010 is finally heard and decided in the light of the directions contained

herein.

The petition stands disposed of in the light of the above terms.

(Dharnidhar Jha, J)

B.Kr./-

U		T	
---	--	---	--