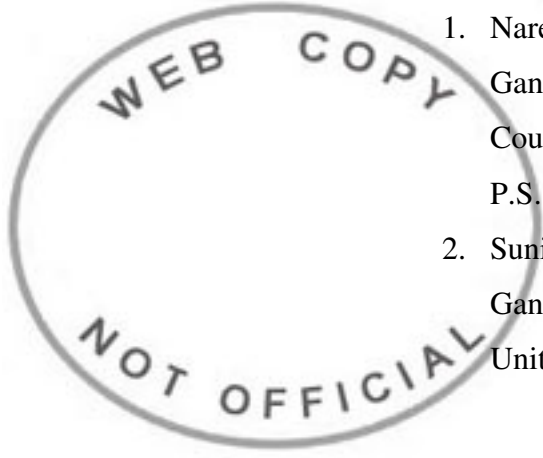


IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1028 of 2016



- =====
1. Narendra Nath Mishra son of Late Nilambar Mishra Village & P.O. Gandhwar P.S. Sakari Dist. Madhubani at present Advocate Patna High Court residing in Bimla Tower Flat No. A 14 New Punaichak P.O. + P.S. Shastrinagar Patna - 23.
 2. Sunil Kumar Mishra son of Shri Narendra Nath Mishra Village & P.O. Gandhwar P.S. Sakari District Madhubani at present Senior Manager United Bank of India Motijheel Branch Muzaffarpur.

.... Petitioners

Versus

1. The State of Bihar.
2. Smt. Usha Sharma wife of Late Anil Sharma @ Anil Kumar Managing Director Vaishnavi Architect & Engg Pvt. Ltd. at present Village South Tola Bakhtiyarpur, P.O. + P.S. + Railway Station Bakhtiyarpur Dist. Patna.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Satish Chandra Jha, Advocate
For the Opposite Party/s : Ms. Renu Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGEMENT
Date: 27-01-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”), the petitioners seek modification of the order dated 17.12.2015 passed in Cr. Misc. No. 52955 of 2015, whereby the said application filed under Section 482 CrPC for quashing the revisional order dated 07.10.2015 passed by the learned



Additional District and Sessions Judge, XI, Patna in Cr. Revision No. 489 of 2015 rejecting the revision petition preferred by the petitioner and confirming the order dated 16.07.2015 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 552 (c) of 2007, has been dismissed.

2. The petitioners have been made accused in a complaint case filed under Section 200 CrPC. The Jurisdictional Magistrate took cognizance of the offence on the said complaint and held inquiry under Section 202 CrPC. On completion of inquiry, the petitioners were summoned to face trial under Sections 468, 420 and 504 of the Indian Penal Code. At the stage of framing of charge, an application under Section 245 CrPC was filed by the petitioners in the Court of Jurisdictional Magistrate on 20.02.2015. The Jurisdictional Magistrate dismissed the said application for discharge vide order dated 16.07.2015 against which revision petition was filed before the Sessions Judge vide Cr. Revision No. 489 of 2015. After hearing the parties, the learned Additional District and Sessions Judge, XI, Patna dismissed the revision petition vide order dated 07.10.2015. The revisional order dated 07.10.2015 was challenged by the petitioners before this Court by filing an

application under Section 482 CrPC vide Cr. Misc. No. 52955 of 2015, which was dismissed by this Court vide order dated 17.12.2015 observing as under:-

“Though the present application has been filed under Section 482 of the Cr.P.C., the same is in the form of second revision which is barred under Section 397(3) Cr.P.C. Even otherwise there is no apparent error in the impugned order passed by the revisional Court.

Accordingly, the application, being devoid of any merit, is hereby dismissed.”

3. After the aforesaid order dated 17.12.2015 was passed by this Court, the petitioners have filed the present application under Section 482 CrPC on 06.01.2016 seeking modification of the same.

4. It has been contended by learned counsel for the petitioners that on 17.12.2015, Cr. Misc. No. 52955 of 2015 was listed as Item No. 312 in the cause-list. Since the matter was not likely to be taken up, a mentioning was made before the Bench for early hearing of the case which was accepted by the Court and the record was summoned from office. However, due to huge rush in the court room, learned counsel for the



petitioner came out of the court-room and was standing in the *varanda*. He has submitted that when the matter was taken up, he was not in the court-room and the order was passed in his absence. He came to know about the order at about 12.30 p.m. on the same day. He has further submitted that since the order was passed in his absence, the same may be recalled and modified.

5. On the other hand, learned counsel for the State has submitted that the present application under Section 482 CrPC is not maintainable in view of the statutory bar created under Section 362 CrPC, which clearly prescribes that no Court could review or alter its judgment after the judgment has been pronounced and signed.

6. I have heard learned counsel for the parties. I find substance in the submission made by learned counsel for the State. There is nothing on record to suggest that the order was passed in absence of the counsel for the petitioner. Moreover, if the counsel had mentioned a case for out of turn hearing, he ought to have been vigilant about his case. Furthermore, if he had come to know at 12.30 p.m. that his case has been dismissed, he ought to have raised his grievance before the Court immediately on the same day.

7. Be that as it may, I find it appropriate to refer here Section 362 CrPC, which reads as under:

“362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

8. A bare perusal of the provisions prescribed under Section 362 CrPC makes it clear that there is no power of review with the criminal Court after judgment has been rendered except to correct a clerical or arithmetical error as the Court becomes *functus officio*. The Court can alter or review its judgment before it is signed.

9. In that view of the matter, I do not find any merit in the present application. Accordingly, the same is dismissed.

(Ashwani Kumar Singh, J.)

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