

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.905 of 2008

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Dinesh Tiwary, Son of Late Bhukhal Tiwary, Resident of Village Belsand,
P.S. Barauli, Distt-Goaplganj

.... Petitioner/s

Versus

1. The State of Bihar
2. Mohan Sharma, Son of Phulena Sharma
3. Jamwant Tiwary, son of Sandiha Tiwary
4. Bhola Tiwary, son of Sanchita Tiwary
5. Amit Pandey, son of Ramayan Pandey
6. Guru Sharan Tiwary, son of late Jamadar Tiwary
7. Ramayan Pandey, son of Vaudeo Pandey
8. Arvind Pandey, son of Ramayan Pandey
9. Kishori Devi, wife of Balisher Ram

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Awanish Kr.Pandey

For the Respondent/s : Mr. B.Lal (App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

5 30-11-2016

1. The present application has been preferred against an order, dated 31.05.2008, passed by learned First Additional Sessions Judge, Gopalganj in Barauli P. S. Case No. 170 of 2003 in compliance of an order of this Court, dated 18.01.2008, in Criminal Revision No. 1017 of 2007, asking the Court below to reconsider its previous order, dated 04.06.2007, whereby the application filed by the Opposite parties under Section 227 of the Code of Criminal Procedure, 1973, (hereinafter referred as the **Code**) was allowed. By the impugned order, dated 31.05.2008 learned Court below has reiterated the view, which he had taken in the

previous order, dated 04.06.2007.

2. It is submitted on behalf of the petitioner that the reason assigned by the Court below for affirming the view expressed by him in the order, dated 04.06.2007 is erroneous inasmuch as, he has recorded that there being no provision for review under the Code, the earlier order could not be reconsidered. According to him, since this Court had directed the Court below vide order, dated 18.01.2008 to reconsider his order, dated 04.06.2007, he ought not to have refused to reconsider its previous order on the reasoning that there was no provision for review under the Code.

3. I have perused the order of this Court, dated 18.01.2008 and have carefully examined the order passed by the learned Court below in compliance thereof dated 31.05.2008, which is being challenged in the present revision application.

4. The Opposite party Nos. 2 to 9 were discharged under Section 227 of the Code by an order, dated 04.06.2007 passed by the learned trial Court. It appears that the petitioner, who was complainant of the concerned Barauli P. S. Case No. 170 of 2003 had filed a protest-cum-complaint petition. Taking into account the materials collected in course of investigation and the

contents set out in protest-cum-complaint petition, the Court below held that there was hardly any sufficient ground to proceed against them.

5. A plea was taken before this Court in said Criminal Revision No. 1017 of 2007 that the learned trial court had not considered the statement of the complainant Dinesh Tiwary and some other witnesses, namely, Bharat Tiwary, Nathuni Tiwary, Rajan Tiwary, who had categorically supported the prosecution case in course of investigation.

6. The petitioner in the said Criminal Revision No. 1017 of 2007 had asserted that the Court below had erroneously relied on the statements of Mala Devi and Rani Kumari said to be the wife and daughter of the victim, Umesh Tiwary, which was not correct. In the circumstances, this Court had directed the trial Court to reconsider the matter in the light of the statement of the Complainant Dinesh Tiwary and witnesses, Bharat Tiwary, Nathuni Tiwary and Rajan Tiwary recorded under Section 161 of the Code by the Investigating Officer as also the officer supervising the occurrence.

7. From the impugned order I notice that in compliance of the order of this Court, the Court below after examining the material on record, concluded that



the statement of the complainant and the witnesses Bharat Tiwary, Nathuni Tiwary and Rajan Tiwary had already been discussed in its earlier order, dated 04.06.2007. As regards non-consideration of the statement of Bharat Tiwary recorded in course of investigation, it is mentioned that no such person was ever examined by the police though statement of one Bharat Sah was there in paragraph 6 of the case diary, which was elaborately discussed in the order, dated 04.06.2007.

8. Considering the above aspects, learned court below confirmed its earlier order, dated 04.06.2007, by the impugned order, dated 31.05.2008.

9. I do not find any illegality in the impugned order, dated 31.05.2008. It cannot be said that he refused to reconsider its earlier order, dated 04.06.2007 on the ground that there was no provision for review under the Cr.P.C., rather, in compliance of the order of this Court, dated 18.01.2008, he after reexamining the points referred in the said order, has passed the order, which is under challenge in the present criminal revision application.

10. It must be recorded that this Court while passing the order, dated 18.01.2008 had made it clear

that it was not disturbing the findings recorded in the earlier order, dated 04.06.2007 passed by the Court below.

11. In such circumstance, I find no merit in this application and is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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