

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 19249 of 2013

Arising Out of PS.Case No. -126 Year- 2009 Thana -BIDUPUR District- VAISHALI(HAJIPUR)

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1. Kundan Kumar Son of Nawal Kishore Singh
 2. Vikky Kumar Son of Nawal Kishore Singh
 3. Rajo Devi Wife of Nawal Kishore Singh
 4. Surendra Singh Son of Late Ram Nihora Singh
 5. Ramadhar Singh Son of Late Ram Nihora Singh
 6. Shivajee Singh Son of Late Ram Nihora Singh
 7. Umesh Prasad Singh Son of Ram Birajan Singh
 8. Shobha Devi Wife of Umesh Prasad Singh
 9. Ranjeet Singh Son of Ramadhar Singh
 10. Nima Devi @ Mina Devi Wife of Ranjeet Singh
 11. Anil Kumar Singh Son of Shivajee Singh
 12. Madhu Devi Wife of Anil Kumar Singh
 13. Mamta Devi Wife of Pawan Kumar Singh

All Residenst of Village : Rajasan, P.S. : Bidupur, District : Vaishali.

.... Petitioners

Versus

1. The State of Bihar
2. Shiv Pujan Singh, S/o Late Ram Kumar Singh, R/o Village Rajassan, P.S. Bidupur, Distt. Vaishali.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Niraj Kumar @ Sanidh

For the Opposite Party/s : Mr. Ahmad Ali, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 09-05-2016

Heard learned counsel for petitioners and Mr. Ahmad Ali,

learned Addl. Public Prosecutor.

Thirteen petitioners have approached this Court invoking

its inherent jurisdiction, with a prayer to quash an order dated

24-11-2010 passed by the learned Chief Judicial Magistrate, Vaishali

at Hajipur in Bidupur P.S. Case No. 126 of 2009 (Tr. No. 2766 of

2010). By the said order, the learned Magistrate has taken cognizance

of offence under Sections 323, 504/34 of the Indian Penal Code by

cancelling the jurisdiction of the Gram Kutchery. Petitioners have also prayed for quashing of an order dated 07-07-2011 passed in Cr. Rev. No. 16 of 2011/19 of 2011. By the said order, the learned Addl. Sessions Judge-II, Vaishali has too rejected the revision preferred against the order of cognizance.

Learned counsel for petitioners at the very outset submits that offences alleged were triable by the Gram Kutchery and as such, the learned Chief Judicial Magistrate was not authorized to pass order of cognizance. He further submits that even learned Magistrate has passed order for cancelling the jurisdiction of Gram Kutchery, the said order has been passed without assigning any reason. It has been argued that while cancelling the jurisdiction, it is necessary to assign reason. In absence of any reason, such order is required to be set aside.

Learned counsel for petitioners has relied on a judgment of this Court reported in **1998 (1) P.L.J.R. 893 (Shaukat Ali –Vs.- State of Bihar)**.

Learned Addl. Public Prosecutor has opposed the prayer of the petitioners and submits that the present petition may be rejected only on the ground that the order of cognizance has already been approved by the revisional court and as such, the present petition amounts to second revision, which is not maintainable.

Besides hearing learned counsel for the parties, I have also perused the material on record. Normally, in a case where an order passed by the Magistrate is approved by the revisional court, this Court is not entertaining a petition filed under Section 482 of the Cr.P.C., since such petition amounts to second revision, which is barred under Section 397(3) of the Cr.P.C. However, apparently, in view of the fact that learned Magistrate has passed order contrary to the settled law, particularly in view of **Shaukat Ali's case** (*supra*), the Court is of the opinion that order impugned can be set aside and remitted back to the learned Magistrate with an opinion that if learned Magistrate considers that the jurisdiction of the Gram Kutchery is required to be cancelled, he must assign reason for cancelling the same.

The order impugned is set aside and the matter is remitted back to the learned Judicial Magistrate 1st Class, Vaishali at Hajipur/concerned court.

(Rakesh Kumar, J.)

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