

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.771 of 2014

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1. Smt. Ram Sagar Devi Wife of Mahendra Sah resident of Mohalla-
Khajasarai, P.S.- Laherisarai, District- Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. Shahnaz Bano Wife of Md.Akhaturzzama
3. Arun Kumar Mishra Son of late Dineshwar Mishra
4. Smt. Meera Mishra Wife of Arun Kumar Mishra
5. Gulrej Alam
6. Tabrej Alam
7. Moorej Alam
8. Aquil Alam All Sons of respondent no.-05 to 08 Md. Akhatruzzama
9. Gautam Mishra
10. Nandan Mishra both Sons of Arun Kumar Mishra All resident of
Mohalla- Khajasarai, P.S.- Laherisarai, District- Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ratan Kumar Kumar

For the Respondent/s : Mr. P.N. Pandit (App)

For Opp-Party Nos.3 and 4: Mr.Gajendra Kumar Jha, No.2

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

4 12-01-2017 Heard learned counsel for the parties.

2. The petitioner is aggrieved by an order dated 02.07.2014 passed by learned Fast Track Additional Sessions Judge 4th, Darbhanga in Criminal Revision No. 197 of 2012, whereby he has set aside an order dated 04.11.2011 passed by learned Judicial Magistrate Ist Class, Darbhanga in protest-cum-complaint petition No. 282 of 2010 taking cognizance of the offence punishable under Sections 323 and 384 of the Indian Penal Code.

3. Certain facts and relevant dates are to be taken



note of.

4. A complaint case was filed by the petitioner in the Court of learned Chief Judicial Magistrate, Darbhanga being Complaint Case No. 198 of 2006, which was sent to the Police under Section 156(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the **Code**) leading to registration of Laheriasarai P.S. Case No. 100 of 2008. The FIR disclosed commission of the offence punishable under Sections 341,323,504,420,384,466,471 read with Section 34 of the Indian Penal Code. The police upon completion of investigation submitted report holding the accusation to be false and, accordingly, recommended prosecution of the petitioner under Section 211 of the Code. The petitioner had filed a complaint-cum-protest petition registered as Complaint case No. 282 of 2010, in which the learned Judicial Magistrate Ist Class took cognizance of the aforesaid offences under Sections 323 and 384 of the Indian Penal Code by the order dated 04.11.2011.

5. One of the accused persons, namely, Smt. Mira Mishra, aggrieved by the said order, dated 04.11.2011 had filed criminal revision application before the learned Sessions Judge, Darbhanga giving rise to Criminal Revision No. 28 of 2012. Learned Sessions Judge, Darbhanga by an order dated 16.05.2012 dismissed the application and thus, upheld the



order taking cognizance dated 04.11.2011 passed by the learned Judicial Magistrate Ist Class, Darbhanga. From the said order dated 16.05.2012, which has been brought on record by way of Annexure-4, it appears that a plea was taken that no offence under Sections 323 or 384 of the Indian Penal Code was made out. After considering the said contention, learned Sessions Judge, Darbhanga had rejected the revision application. Thereafter, another co-accused person, namely, Shahnaz Bano filed another criminal revision application before the Court of learned Sessions Judge, Darbhanga, which came to be registered in the file of learned Adhoc Additional Sessions Judge 4th, Darbhanga assailing the same order dated 04.11.2011. This cannot be disputed that the present petitioner was party to the previous criminal revision application filed in the Court of learned Sessions Judge, Darbhanga being Criminal Revision No. 28 of 2012, which was dismissed by the order dated 16.05.2012.

6. Learned Adhoc Additional Sessions Judge 4th, Darbhanga, however, by the impugned order dated 02.07.2014 has set aside the order dated 04.11.2011 passed by the learned Judicial Magistrate Ist Class, Darbhanga.

7. Assailing the impugned order, learned counsel appearing on behalf of the petitioner has submitted that though an objection was raised that since the issue had



already been decided earlier by learned Sessions Judge, Darbhanga in Criminal Revision No. 28 of 2012 with passing of the order dated 16.05.2012, the subsequent revision application in question should not be entertained. It is his plea that though the Court below noted the aforesaid contention in the impugned order but has not at all discussed as to why he was to take a different view then what had been taken by the learned Sessions Judge, Darbhanga in his order dated 16.05.2012.

8. Learned counsel appearing on behalf of the Opposite parties have justified the impugned order and have submitted that second revision application was filed by the other parties on different grounds which were not taken in earlier case. It has been submitted that lodging of the FIR and complaint case is an abuse of the process of the court as no offence under Sections 323 and 384 of the Indian Penal Code is made out. The prosecution being *mala fide*, learned Court below rightly allowed the revision application and set aside the order dated 04.11.2011.

9. I have perused the impugned order and considered the rival submissions advanced on behalf of the parties. This is not in dispute that the same order dated 04.11.2011 passed by the learned Judicial Magistrate Ist Class, Darbhanga was under challenge in Criminal Revision



No. 28 of 2012, which was dismissed by learned Sessions Judge, Darbhanga. Specific plea was taken before the learned Adhoc Additional Sessions Judge, Darbhanga that in view of the previous order, the second revision application should not be entertained but the said contention has not at all been dealt with by the learned Court below. Further, this is not in dispute that the Opposite party No.2 was party to Criminal Revision No. 28 of 2012. If any of the parties had any grievance against the said order on any ground, she/he could have filed application under appropriate provisions of law but not by filing criminal revision application challenging the same order. She/He could invoke Section 482 of the Code or writ jurisdiction of this Court if she had any grievance against the said order.

10. The impugned order dated 02.07.2014, therefore, cannot be sustained and is, accordingly, set aside.

11. Nothing in this order will preclude the contesting Opposite parties from filing appropriate application in accordance with law, if according to them the entire prosecution is attended with *mala fide*, abuse of the process of the Court or involves disputes which are purely civil in nature having no criminal consequence. The Opposite parties may also raise such plea, which they had raised before the learned Adhoc Additional Sessions Judge,



Darbhanga at the stage of framing of charge.

12. With these observations, this application is allowed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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