

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48948 of 2014

Arising Out of PS.Case No. -74 Year- 2010 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

- =====
1. Bibhuti Bhushan son of Late Kunj Bihari Singh
 2. Draupadi Devi widow of Late Kunj Bihari Singh
 3. Neelam Devi wife of Bibhuti Bhushan

All residents of village - Bind, P.S. - Bind, District - Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Jagat Prasad @ Sadhu Ji son of Late Basudeo Mahto, resident of village - Gaus
Nagar, P.S. - Sarmera, District - Nalanda.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Rajendra Prasad, Sr. Advocate
: Mr. Ritesh Kumar, Advocate
: Mr. Pramod Kumar, Advocate
For the Opposite Party No.2 : Mr. Dr. Anjani Prasad Singh, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-08-2017

Heard Mr. Rajendra Prasad, learned Senior Advocate for the
petitioners and Mr. Anjani Prasad Singh, learned Advocate for
opposite party no.2.

2. This application under Section 482 of the Code of
Criminal Procedure (For short 'the CrPC') has been filed for quashing
the order dated 14.12.2013 passed by the 1st Ad hoc Additional
Session Judge, Nalanda at Biharsharif in Cr. Revision No.43 of 2013
whereby he has set aside the order dated 31.01.2013 passed by the
learned Judicial Magistrate, 1st Class, Biharsharif, Nalanda dismissing
the Complaint Case No.74C of 2010 as also for quashing of the
consequential order dated 30.05.2014, passed by the learned Judicial



Magistrate, 1st Class, Biharsharif, Nalanda whereby she has summoned the petitioners after taking cognizance of the offence under Section 302/34 of the Indian Penal Code (for short 'the IPC').

3. The facts of the case, in brief, are that the opposite party no.2 filed Complaint Case No.360C of 2007 making the petitioners accused alleging therein that the accused persons have poisoned one Mani Bhushan in the night after assaulting him. The afore-stated complaint was referred to the police for investigation pursuant to which Bind P.S. Case No.52 of 2008 dated 14.06.2008 was registered under Sections 328 and 302/34 of the IPC against the petitioners and investigation was taken up. On completion of investigation, the investigating officer submitted final report on 30th June, 2009 holding the prosecution case to be false.

4. It would be pertinent to note herein that during the pendency of the investigation a complaint in the nature of protest was filed by the opposite party no.2 in the police case. On receipt of the police report, vide order dated 16.01.2000, the learned Chief Judicial Magistrate, Nalanda at Biharsharif accepted the police report submitted under Section 173(2) of the CrPC and directed for institution of a separate complaint on the basis of protest petition filed by the opposite party no.2. Accordingly, Complaint Case No.74C of 2010 was registered against the petitioners. In the said complaint, the complainant was examined on solemn affirmation and apart from the



complainant, three witnesses were examined in course of enquiry conducted under Section 202 of the CrPC. After holding enquiry and after considering the entire materials on record, the learned Chief Judicial Magistrate, Nalanda at Biharsharif dismissed the complaint in exercise of powers conferred under Section 203 of the CrPC, vide order dated 31.01.2013.

5. Being aggrieved by the dismissal of the complaint, the opposite party no.2 challenged the afore-stated order dated 31.01.2013 before the Court of Session, vide Cr. Revision No.43 of 2013. In the said criminal revision petition, the petitioners were not made party in any capacity.

6. It is submitted by Mr. Rajendra Prasad, learned Senior Advocate appearing for the petitioners that the petitioners were neither made party nor were given any opportunity of being heard and behind their back the learned 1st Ad hoc Additional Session Judge, Nalanda at Biharsharif, vide judgment and order dated 14.12.2013, set aside the order dismissing the petition of complaint and directed for further enquiry. He has submitted that after the order dated 14.12.2013 was passed by the revisional court, the learned Judicial Magistrate, Nalanda at Biharsharif, even without holding any further enquiry, summoned the petitioners in exercise of powers conferred under Section 204 of the CrPC in Complaint Case No.74C of 2010, vide order dated 30.05.2014. He has submitted that the impugned



orders passed by the revisional court and learned Magistrate are bad in law in view of the ratio laid down by the Supreme Court in **Manharibhai Muljibhai Kakadia & Anr. vs Shaileshbhai Mohanbhai Patel & Ors, [(2012) 10 SCC 517]**.

7. Per contra, Mr. Anjani Prasad Singh, learned Advocate appearing for the complainant has submitted that the witnesses examined in course of enquiry under Section 202 of the CrPC have fully supported the allegations made in the complaint and the order passed by the learned Magistrate, whereby the complaint was dismissed, was erroneous in law. He has submitted that the revisional court, while exercising its revisional power, meticulously examined all the materials available on record and after examining the record it came to a conclusion that the order passed by the learned Magistrate was not only bad, but it was perverse too. He has submitted that non-inclusion of the petitioners as party before the revisional court would be of no consequence, as no prejudice has been caused to the petitioners.

8. I have heard learned counsel for the parties and perused the record.

9. It would be manifest from the record that the petitioners were not made party in the revision application preferred by the complainant- opposite party no.2 and the revisional court had passed the order without affording any opportunity and without hearing the



petitioners and only after hearing learned counsel appearing on behalf of the opposite party no.2. Learned counsel appearing for the complainant- opposite party no.2 has also not disputed this fact. If that be so, the revisional order cannot be sustained in view of the ratio laid down by the Supreme Court in **Manharibhai Muljibhai Kakadia & Anr. vs. Shaileshbhai Mohanbhai Patel & Ors. (supra)**; **P. Sundarrajan and Ors. vs. V.R. Vidhya Sekar, [(2004) 13 SCC 472;** **Raghu Raj Singh Rousha vs. Shivam Sunaram Promoters Private Limited and Anr., [(2009) 3 SCC 363]** and **A.N. Santhanam vs. K. Elangovan, [(2011) 2 JCC 720 (SC)]**. For the same reason, the consequential order passed by the learned Magistrate whereby the petitioners were summoned to face trial would also be bad.

10. In Manharibhai Muljibhai Kakadia & Anr. vs. Shaileshbhai Mohanbhai Patel & Ors. (supra), the facts of the case, in short, was that one Shaileshbhai Mohanbhai Patel had filed a criminal complaint in the court of Chief Judicial Magistrate against one Manharibhai Muljibhai Kakadia and Paresh Lavjibhai Patel alleging that they had pre-planned a conspiracy, created forged documents bearing signatures of the complainant, his father and uncle, two sons of his uncle and his elder brother and had used the said documents as true and genuine by producing the same before the District Registrar, Co-operative Society and, by making false representation, obtained registration of Indorgency Co-operative



Housing Society Limited and, by doing so, the accused had caused financial loss and physical and mental agony to the complainant and his family members and had deceived the complainant by obtaining huge financial advantage by taking possession of the complainant's property. The learned Chief Judicial Magistrate, in exercise of power under Section 202 of the Cr.P.C., directed the enquiry to be made by the Police Inspector into the allegations made in the complaint and submit his report. The Police Inspector investigated into the matter and submitted his report holding that the dispute between the parties was of civil nature and no offence was made out. Thereafter, the learned Chief Judicial Magistrate accepted the report submitted by the Investigating Officer and dismissed the complaint. Being aggrieved by the dismissal of the complaint, the complainant challenged the order before the revisional Court under Section 397 read with Section 401 of the Code in the High Court. The accused persons, having come to know of the criminal revision application, made an application for joining them as party respondents so that they could be heard in the matter. However, the application of the accused persons was dismissed by the High Court, which order was challenged before the Supreme Court. The Supreme Court, after hearing the parties, set aside the order passed by the High Court whereby the application for impleadment in the criminal revision petition was dismissed. While deciding the issue as to whether the accused or a person, who is



suspected to have committed crime is entitled to hearing by the revisional court, the Supreme Court placing reliance on the earlier decisions in **P. Sundarrajan** (supra), **Raghu Raj Singh Rousha** (supra) and **A.N. Santhanam** (supra) observed as under:-

“We are in complete agreement with the view expressed by this Court P. Sundarrajan, Raghu Raj Singh Rousha and A.N. Santhanam. We hold, as it must be, that in a revision petition preferred by complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed crime is entitled to hearing by the revisional court. In other words, where complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the revisional court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the



complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled”.

11. Thus, I find that the Supreme Court in **Manharibhai Muljibhai Kakadia** (Supra) had placed reliance on three of its earlier decisions noted above to hold that in a revision petition preferred by the complainant before the High Court or the Session Judge challenging an order of Magistrate dismissing the complaint under Section 203 of the CrPC, the accused is entitled to hearing by the revisional court.

12. So far as the present case is concerned, there is no dispute to the fact that the complaint was dismissed by the court of Magistrate after holding enquiry under Section 202 of the CrPC in exercise of power conferred under Section 203 of the CrPC and the petitioners were not made party in the revision petition and the revisional court only after hearing the complainant without affording any opportunity of hearing to the petitioners had passed the order against the petitioners.

13. In the light of the ratio laid down by the Supreme Court



in **Manharibhai Muljibhai Kakadia** (supra), the impugned orders cannot be sustained in law.

14. Accordingly, the order dated 14.12.2013 passed by the learned 1st Ad hoc Additional Session Judge, Nalanda at Biharsharif in Cr. Revision No.43 of 2013 and the consequential order dated 30.05.2014 passed by the learned Judicial Magistrate, 1st Class, Biharsharif, Nalanda in Complaint Case No.74C of 2010 are hereby set aside.

15. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.09.2017
Transmission Date	03.09.2017

