

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36300 of 2014

Arising Out of PS.Case No. -188 Year- 2010 Thana -KUCHAIKOTE District- GOPALGANJ

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1. Pramod Chandra Mishra @ Pramod Mishra
2. Raman Chandra Mishra @ Raman Mishra
3. Rajeev Kumar Mishra @Rajeev Mishra
Petitioner nos. 1 to 3 are sons of Late Harimohan Mishra.
4. Anand Mishra , son of Late Amar Nath Mishra.
5. Amir Prasad
6. Anil Prasad @ Anil Kumar
Both sons of Late Bijjamal Prasad
All resident of village - Bhual Khutwaniya , P.O.+P.S. - Kuchaikote, District -
Gopalganj (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Panna Kumar Mishra, son of Sri Daya Shankar Mishra, resident of village
- Bhual Khutwaniya , P.O.+P.S. - Kuchaikote, District - Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chandra Mohan Jha, Adv.
For the Opposite Party no.1 : Mr.M.K. Nirala, APP
For the Opposite Party no.2 : Mr. Birendra Kant Choudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 28-08-2017

Heard learned counsel for the petitioners, learned APP
for the State and learned counsel for the informant.

The petitioners are aggrieved by the order dated
04.07.2014 passed by learned Additional District & Sessions Judge-
IV, Gopalganj in Cr. Rev. No.672 of 2013/15 of 2014 by which the
learned Additional District & Sessions Judge-IV has rejected the
application preferred by the petitioners for setting aside the order



dated 23.05.2013 passed by learned C.J.M., Gopalganj in Kuchaikote P.S. Case No.188 of 2010/Tr.No.1155 of 2013/G.R.No.2206 of 2010 whereby and whereunder the learned C.J.M. has passed an order for amalgamation of complaint case in G.R. No.2206 of 2010.

The facts, as appearing from the records, would show that in fact for the same allegations firstly a complaint case was filed and thereafter a police case was also lodged. In the complaint case, cognizance of the offences under Sections 147, 323 and 504 of the Indian Penal Code was taken by the learned C.J.M., Gopalganj. In the police case, final form was submitted by the police saying that for the same occurrence earlier complaint case was filed. The accused-petitioners preferred revision application against the order taking cognizance and issuance of summons in the complaint case, the order of summoning was set aside and the matter was remanded to the court of learned C.J.M. for passing a fresh order in accordance with law taking note of G.R. Case in which I.O. has submitted final form.

After the aforesaid order was passed, learned C.J.M., Gopalganj considered the entire matter and vide order dated 23.05.2013, while taking cognizance of the offences under Sections 147, 323 and 504 of the Indian Penal Code in the complaint case, held that since cognizance has been taken in the complaint case, for the same occurrence two cases cannot proceed. Hence, the Complaint



Case No.2333 of 2010 was amalgamated with the police case. The petitioners once again challenged the order dated 23.05.2013 passed by learned C.J.M., Gopalganj giving rise to Cr.Rev.No.672 of 2013/15 of 2014, which was finally heard and decided vide order dated 04.07.2014 passed by learned Additional District & Sessions Judge-IV, Gopalganj. The Revision Application of the petitioners was dismissed holding that no illegality or irregularity could be found in the order passed by the learned C. J. M., Gopalganj.

Learned counsel for the petitioners attempted to assail the impugned order on the ground that the revisional court has failed to appreciate that the offences for which cognizance has been taken by learned C.J.M., Gopalganj are exclusively triable by Gram Kutchhery. Submission of the learned counsel is that in view of vesting of the jurisdiction to try the offences alleged under those provisions with Gram Kutchhery, the learned C.J.M. should not have exercised his power and for that reason the order taking cognizance should be held bad and the application before this Court is fit to be allowed on that ground alone.

On the other hand, learned counsel representing the informant as well as the learned APP for the State opposed the prayer of the petitioners and submitted that at the very outset this Court will appreciate that it is an application under Section 482 Cr.P.c. against a



revisional order and, therefore, unless the order is found to be perverted, this Court would be reluctant in exercising its power to quash a proceeding save and except wherever it seems to the court that continuance of the same is an abuse of the process of the Court or it would be otherwise in the interest of justice to quash the proceeding. Learned counsel submits that submission of the learned counsel for the petitioners that there is exclusive jurisdiction vested in the Gram Kutchhery and for that reason the learned C.J.M., Gopalganj could not have taken cognizance of the offences alleged has no basis to stand, the submission is fit to be rejected on the face of the provisions contained under Section 106 of the Bihar Panchayat Raj Act, 2006 and the Rules framed thereunder.

A reading of Section 106 of the Bihar Panchayat Raj Act, 2006 would only demonstrate that notwithstanding the provisions contained in Cr.P.C. the Gram Kutchhery has been conferred with a power to enquire into the offences alleged under the given provisions of the Indian Penal Code. Section 114 of the Bihar Panchayat Raj Act, 2006 specifically provides that wherever a magistrate or the competent court would find that before it a case is pending which is otherwise triable by the Gram Kutchhery, the said court shall transfer such cases/proceedings to the Gram Kutchhery. However, in the present case, there is no material on record to show that at any point



of time the petitioners filed an application under Section 114 of the Bihar Panchayat Raj Act, 2006 before the learned C.J.M. In absence of any such application no specific consideration has been given to this aspect of the matter either by the learned Chief Judicial Magistrate or by the revisional court and, therefore, the petitioners are not justified in canvassing this issue for the first time before this Court. It is submitted on behalf of the informant and the State that this Court in exercise of its power would not suo motu transfer the proceeding pending in the court of learned Chief Judicial Magistrate, Gopalganj to Gram Kutchhery.

I have heard learned counsel for the parties and perused the records. In opinion of this Court, the learned Chief Judicial Magistrate, Gopalganj has not committed any error in taking cognizance and that of amalgamation of the complaint case with the police case. Similarly, the revisional court has rightly not gone beyond the scope and ambit of its consideration limited to the legality and validity of the order passed by the learned Chief Judicial Magistrate, Gopalganj. The issue which is being raised by the petitioners or was canvassed before the revisional court had no basis and the same has rightly not been considered by the revisional court. The petitioners, if so advised, may file an appropriate application in the court of learned Chief Judicial Magistrate, Gopalganj for this



purpose and if any such application is filed by the petitioners the same shall be considered by the learned Chief Judicial Magistrate, Gopalganj in accordance with law.

The present application has no merit and the same is hereby dismissed.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.08.2017
Transmission Date	29.08.2017

