

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40195 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- AURANGABAD

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Anita Devi, wife of Sri Rajesh Kumar Pankaj, resident of village & P.O. – Poiwan, P.S. – Muffasil, Aurangabad, District – Aurangabad, Bihar.

.... Petitioner

Versus

1. The State of Bihar.
2. The Circle Officer, Block – Aurangabad, District – Aurangabad.
3. Sri Prem Kumar Daruka, son of Late Mahavir Prasad Daruka, resident of Mohalla – New Area, Maharajganj Road, P.S. – Town Aurangabad, District – Aurangabad, Bihar.

(O.P. No. 3 since deceased has been substituted by following heirs and legal representatives vide order dated 11.07.2016 passed by the Court on I.A. No. 785/2016 filed in Cr. Misc. No. 42871/2013)

- 3(i) Mira Daruka, W/o Late Prem Kumar Daruka.
- 3(ii) Raghvendra Kumar Daruka, S/o Late Prem Kumar Daruka.
- 3(iii) Manish Kumar Daruka, S/o Late Prem Kumar Daruka, resident of Mohalla – New Area, Maharajganj Road, P.S. – Town Aurangabad, District – Aurangabad, Bihar.
- 3(iv) Rashmi Tibrewal, D/o Late Prem Kumar Daruka, resident of Belair Apartment, Main Road, Ranchi, P.S. District – Ranchi (Jharkhand).
- 3(v) Ritima Agarwal, D/o Late Prem Kumar Daruka, resident of Belair Apartment, Main Road, Ranchi, P.S. District – Ranchi (Jharkhand).

.... Opposite Parties.

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Appearance :

For the Petitioner	:	Mr. Rajendra Narain, Sr. Advocate Mr. Manish Kumar, Advocate
For the Opposite Party	:	Mr. H.S. Himkar, Advocate Mr. Kaushlendra, Advocate Mr. Sunit Kumar, Advocate
For the State	:	Mr. R.B. Roy 'Raman', Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 06-09-2017

Heard Sri Rajendra Narain, learned Senior counsel
assisted by Sri Manish Kumar, learned Advocate on Record,
Sri H.S. Himkar, learned counsel appearing on behalf of the

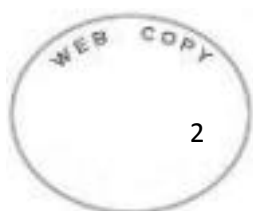


original opposite parties Nos. 3(i) to 3(v) and learned Additional Public Prosecutor for the State.

Since the party position has been wrongly stated in the present application, this Court has referred the position of the parties originally appearing in Cr. Misc. No. 46131/2013.

The petitioners have filed this application for modification of the order dated 19.07.2017 and Cr. Misc. Nos. 46131/2013 and 42871/2013 which were heard together and disposed of by a common order.

Learned Senior counsel representing the petitioners [original Opposite Party Nos. 3(i) to 3(v)] having realized the scope and ambit of a Modification Application filed before this Court has concentrated his argument only to the paragraph-29 of the order passed by this Court to contend that, once a civil suit is pending between the parties, Section 145 Cr.P.C. proceeding should not continue. Paragraph-29 of the judgment contains the opinion of this Court based on the facts as appearing from the pleadings of the parties and submissions and the judicial pronouncement of the Hon'ble Supreme Court. This Court has not recorded any opinion as to continuance of the proceeding. The Sub-



Divisional Magistrate has to take a decision on all issues, therefore, this Court does not find any ground to modify its order.

Learned Senior counsel admits that Section 145 Cr.P.C. proceeding was initiated at the instance of Prem Kumar Daruka (since deceased) who happened to be the father of opposite parties nos. 3(i) to 3(v).

This Court has already expressed its opinion in paragraph-29. The submission of learned Senior counsel that Section 145 Cr.P.C. proceeding should not continue, need not be entertained by this Court for the purpose of modification of this order as there are procedure laid down under the Code of Criminal Procedure and the Sub-Divisional Magistrate has to take an independent view in terms of paragraph-29 of the Judgment of this Court.

The Modification Application has no merit and the same is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.09.2017
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