

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Revision No.776 of 2014**

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1. Smt. Poonam Kumari @ Poonam Kumari, W/o Late Ajay kumar, resident of Nohatta Kothi, Mohalla Mirzapur Nohatta, Police Station- Fatuha, District- Patna

2. Sri Brind Prasad Singh@ Brind Prasad, Son of Late Prasad Mahto

3. Sri Kamlesh Kumar @ Kamlesh Kumar, Son of Brind Prasad Singh

4. Sri Mithlesh Kumar @ Mithlesh Kumar, Son of Sri Brind Prasad Singh

All resident of village- Bankipur, P.O.- Bankipur, Machhariyawan, Police Station- Fatuha, District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar.

2. Smt. Nirja Devi, Wife of Sri Santosh Prasad, Resident of village- Lakawa Bigha, Police Station- Parwalpur, District- Nalanda. At Present resident of Nohatta Pothi, Mohalla Mirzapur Nohatta, Police Station- Fatuha, District- Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Anil Kumar Singh, Adv.

For the Complainant : Mr. Dharendra Kumar, Adv.

For the State : Mr. Amit Kumar Rakesh, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI  
SHARAN SINGH**

ORAL ORDER & JUDGMENT

**Date: 12-01-2017**



Heard the parties.

By the impugned order, dated 23.07.2014, passed by learned Sessions Judge, Patna, in Cr. Revision No. 4225 of 2014, after setting-aside an order, dated 03.05.2014, passed by the learned Judicial Magistrate, Ist Class, Patna City, in Complaint Case No. 527 of 2011, the matter has been remitted back to the Court of learned Judicial Magistrate, Ist Class, for passing an order afresh. Learned Judicial Magistrate, Ist Class, by the said composite order, dated 03.05.214, rejected the petition, under Section 311 of the Code of Criminal Procedure, filed by the complainant and allowed an application filed by the petitioners under Section 245 of the Code of Criminal Procedure.

Learned counsel, appearing on behalf of the petitioners, has submitted that since no case is made out, on the basis of the evidence adduced, learned Magistrate had rightly discharged the accused persons in exercise of power under Section 235 of the Code of Criminal Procedure.

From the impugned order, I find that learned Sessions Judge, Patna, has taken into account the fact that learned Judicial Magistrate, Ist Class, Patna City,



before allowing the application, filed under Section 245 of the Code of Criminal Procedure, did not record any finding that on the basis of evidence available, no case was made out to proceed against the accused persons any further. The reasoning assigned, in my view, appears to be sound. Particularly when the matter has been remitted back to the Court of learned Judicial Magistrate, Ist Class, Patna City, for passing an order afresh, the said order does not require interference by this Court in the present revision application.

This application is, accordingly, dismissed.

It is the case of the petitioners that though the complainant always appeared before the learned court below but did not produce any witness for examination and in that background, learned Judicial Magistrate, Ist Class, Patna City, had rightly passed the order under Section 245 of the Code of Criminal Procedure. This aspect may be considered by the Court of learned Judicial Magistrate, Ist Class.

**(Chakradhari Sharan Singh, J.)**

Praveen-II/-

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