

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.612 of 2014

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1. Anand Mishra, son of Late Nokho Mishra, resident of village Harinagar, Police Station Kusheshwar Asthan, District Darbhanga
 2. Smt. Moti Devi, wife of Shri Bimal Chanra Khan, resident of village Aaso, Police Station Kusheshwar Asthan, District Darbhanga
 3. Bimal Chanra Khan, son of Late Ram Swarup Khan, resident of village Aaso, Police Station Kusheshwar Asthan, District Darbhanga
 4. Nimesh Kumar, son of Sri Baidhya nath Paswan, the then Panchayat Rojgar Sevak, Gram Panchayat Raj Harinagar, Police Station Kusheshwar Asthan, District Darbhanga. At present, residing at Niketan Chak, Police Station Sampat Chak, District Patna
 5. Bablu Kumar, son of Sri Paras Nath Ssingh, the then Block Project Officer MANREGA, Block- Kusheshwar Asthan (west), District Darbhanga. At present, posted as programme Officer, Block- Darbhanga (Sadar), District Darbhanga
 6. Vishwanath Rai @ Viswanath Prasad Rai, son of Sri Ramashish Rai, the then Junior Engineer MANREGA, Block Kusheshwar Asthan (West), District Darbhanga. At present, posted as Junior Engineer MANREGA, Block Keoti Runway, District Darbhanga
 7. Awadhesh Kumar Jha, son of Sri Baidhya Nath Jha, a resident of village Bangerhatta, Police Station Singhiya, District Samastipur. At present. PTA MANREGA, Block- Kusheshwar Asthan (west), District Darbhanga.

.... Petitioners

Versus

1. The State of Bihar
2. Gunanad Jha, son of Late Brij Kishore Jha, resident of village and Police Station Harinagar, Police Station Kusheshwar Asthan, District Darbhanga

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Raju Kumar Singh, Advocate Mr. Amit Kumar Singh, Advocate
For the State	:	Mr. Ajay Kumar No. 2, APP
For the informant	:	Mr. Manish Kumar No. 13, Advocate Mr. Rohit Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER



ORAL

Date: 08-02-2017

I.A. No. 1646 of 2014 has been filed by the petitioners, under Section 5 of the Limitation Act, seeking condonation of delay in preferring the present criminal revision application against the judgment and order, dated 24.09.2013, passed by learned Ad hoc Additional Sessions Judge III, Darbhanga, in Criminal Revision No. 427 of 2012.

2. Having considered the reasons assigned in the present petition seeking condonation of delay and having heard the learned counsel for the petitioners, this Court is satisfied that the petitioners were prevented by sufficient causes from preferring the revision application within time.

3. In view of the above, the delay in preferring the application is hereby condoned.

4. I. A. No. 1646 of 2014 shall stand disposed of.

5. Heard learned Counsel for the petitioners, learned Counsel appearing on behalf of the informant and learned Additional Public Prosecutor representing the State.

6. This application, under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), has been filed for setting aside an order, dated 24.09.2013, passed by learned Ad hoc Additional Sessions Judge III, Darbhanga, in Criminal



Revision No. 427 of 2012, whereby the said revision application, filed by Opposite Party No. 2, directed against the order, dated 04.10.2012, passed by learned Judicial Magistrate, 1st Class, Biraul, at Benipur, in Misc. Case No. 74 of 2012 (C. R. No. 224 of 2012) has been allowed. By the said order, dated 04.10.2012, the learned Judicial Magistrate, 1st Class, Biraul, at Benipur, had dismissed the complaint petition filed against the petitioners under Section 203 of the Code.

7. The short point, which has been taken on behalf of the petitioners, is that before passing of the impugned order by learned Ad hoc Additional Sessions Judge III, Darbhanga, no notice was issued to them.

8. Learned counsel appearing on behalf of the petitioners has submitted that the learned Court below was bound to issue notice to the petitioners, if an order dismissing complaint petition filed against the petitioners was to be assailed and allowed. He has relied on Supreme Court's decision, in the case of **Manharibhai Muljibhai Kakadia and Another v. Shaileshbhai Mohanbhai Patel and Others**, reported in **(2012) 10 SCC 517**, with special reference to paragraph nos. 48 and 53, which read thus:

"48. In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the



Magistrate Under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of Sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203—although it is at preliminary stage—nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to “accused” or “the other person” under Section 401(2) of being



heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.

53. We are in complete agreement with the view expressed by this Court in *P. Sundarrajan v. R. Vidhya Sekar*, reported in (2004) 13 SCC 472, *Raghu Raj Singh Rousha v. Shivam Sundaram Promoters (P) Ltd.*, reported in (2009) 2 SCC 363 and *A.N. Santhanam v. K. Elangovan*, reported in (2012) 12 SCC 321. 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.”



9. It is evident from the said decision of the Supreme Court, in the case of **Manharibhai Muljibhai Kakadia** (supra), that whether a complaint case has been dismissed by the Magistrate, under Section 203 of the Code, either at the stage of Section 200 of the Code itself or on completion of enquiry by the Magistrate under Section 202 of the Code or on the receipt from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegation made in the complaint, the effect of such dismissal is termination of a complaint proceeding. The Supreme Court observed, in **Manharibhai Muljibhai Kakadia** (supra), that it is mandate of Section 401 of the Code that if a challenge is to be made to such an order dismissing complaint petition, the person against whom the criminal proceeding stood terminated, has a right to be heard.

10. Learned Counsel appearing on behalf of the petitioners appears to be right in his submission while referring to Supreme Court's decision, in the case of **Manharibhai Muljibhai Kakadia** (supra), which squarely covers the point taken in the present application.

11. This application stands accordingly allowed. The impugned order, dated 24.09.2013, passed by learned Ad hoc Additional Sessions Judge III, Darbhanga, in Criminal Revision No. 427 of 2012, is, hereby, set aside. The learned



Appellate Court is directed to pass an order afresh after giving the petitioners opportunity of hearing in compliance of the provisions of Section 401 of the Code, read with the Supreme Court’s decision, in **Manharibhai Muljibhai Kakadia** (supra).

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	10.02.2017
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