

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30686 of 2013

Arising Out of PS.Case No. -1908 Year- 2011 Thana -SARAN COMPLAINT CASE District-
SARAN

- =====
1. Krishna Kumar Singh,
 2. Ravindra Singh @ Gama, both s/o late Bhuali Singh,
 3. Urmila Kuar, w/o late Bhuali Singh,
 4. Shyam Sundari Devi, w/o Ravindra Singh @ Gama, all resident of Tola Fakru Rai, P.O. Tola Singan Rai, P.S. Bairya, District Ballia (U.P.).
- Petitioner/s

Versus

1. The State of Bihar.
 2. Dinanath Singh, s/o late Sheopajan Singh, residing at Maripur Khurd (Chotki Marai), P.S. Manjhi, District Saran.
- Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Manindra Kumar, Advocate
For the Opposite Party No.1: Mr. Ganesh Prasad Singh, APP
For the Opposite Party No.2: Dr. Rajesh Kumar Singh, Advocate
Mr. Anant Kumar Bhaskar, Advocate
Mr. Sanjay Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 14-02-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 31.08.2012 passed by the Sessions Judge, Saran at Chapra, in Cr. Revision No.196 of 2012, by which the order dated 05.06.2012 passed by the Judicial Magistrate, 1st class, Chapra, in Complaint Case No.1908 of 2011 (Enquiry No.378 of 2012) dismissing the Complaint under Section 203 Cr. P.C., was set aside.

2. Heard learned counsel for the petitioners and



the learned APP for the State as well as learned counsel for the Opposite Party No.2.

3. Counsel for the petitioners has submitted that he is challenging the impugned order purely on the question of law that the learned Sessions Judge has passed the impugned order in the Cr. Revision without hearing the petitioners which is in violation of Section 401 Cr. P. C. and is also against the principle of natural justice. That being the position, subsequent order dated 06.12.2012 passed by the learned Magistrate summoning the petitioners to face trial is also bad in law.

4. Brief facts of the case are that originally a police case was filed making allegation that the daughter of the Opposite Party No.2 was married with the petitioner No.1 on 18.04.2008. Since then, demand of rupees two lacs as dowry was made and due to non-fulfillment of demand of dowry the daughter of the complainant was burnt to death. The wife of the complainant got telephonic message about the death of her daughter by sprinkling kerosene oil on her and the accused persons were taking her for cremation. The wife of the complainant rushed to Manjhi Ghat and saw the accused persons running away after throwing the dead body in the river. First Information Report was registered on such



allegation with Manjhi P.S. bearing Manjhi P.S. Case No.27 of 2009 under Section(s) 498-A, 304-B, 201/34 Indian Penal Code and Section 4 of the Dowry Prohibition Act.

5. The police after investigation submitted Final Report as mistake of fact. The Magistrate accepted the Final Report. The complainant (Opposite Party No.2) filed Protest Petition on 29.05.2009, which was treated as complaint and during enquiry three witnesses were examined. The learned Magistrate by a detailed order dated 05.06.2012 (Annexure-2) after discussing the statement of the witnesses recorded during enquiry, came to the finding that no *prima facie* case is made out against the accused persons and dismissed the complaint under Section 203 Cr. P. C.

6. Counsel for the petitioners in support of his argument has relied on the judgment of the Supreme Court in the case of *P. Sundarrajan and others Vs. R. Vidhya Sekar* reported in (2004) 13 Supreme Court Cases 472, judgment of this Court in the case of *Rajauddin & Ors. Vs. The State of Bihar and anr.* reported in 2010(4) PLJR 766, and in the case of *Binod Prasad Singh @ Binod Singh Vs. The State of Bihar and anr.* reported in 2016 (4)PLJR 560.

7. On the other hand, counsel for the Opposite



Party No.2 has submitted that no notice is required to be sent to the petitioners i.e. accused persons in a revision under Section 398 Cr. P.C. When a person has been discharged after his appearance in Court, notice must be issued to him in a revision preferred against the order of his discharge, but the same cannot be a case when the complaint is dismissed for the reason that till accused is summoned, he has no *locus standi* in the case whether in course of enquiry or in a revision preferred against the dismissal of the Complaint Petition.

8. Counsel for the Opposite Party No.2 strongly relied on the judgment in the case of ***Rajendra Lal Das Vs. State of Bihar*** reported in **2003(4) PLJR 437**. He has also relied on the judgment of Division Bench of this Court in the case of ***Keshaw Singh Vs. State of Bihar*** reported in **2008 (3) PLJR 424**, which also after relying on the judgment in the case of ***Rajendra Lal Das*** (supra) held that further enquiry under Section 398 of the Code of Criminal Procedure will not vitiate on the ground that no notice was given to the persons shown as accused.

9. Counsel for the Opposite Party No.2 has also relied in support of his submission on the judgment of this Court in the case of ***Sheo Narain Singh Vs. Ram Pertap Rai*** reported in **AIR 1919 Patna 567** and the judgment of this Court in the case of (***Dr.***)



Kumar Kishore Mandal Vs. Kamal Deva Thakur reported in ***1986 PLJR 21.***

10. Having heard the counsel for the parties and from perusal of the impugned order, this Court finds that initially the learned Magistrate after holding enquiry under Section 202 Cr. P. C. dismissed the complaint filed by the complainant under Section 203 Cr. P.C. by order dated 05.06.2012. The aforesaid order was challenged by the complainant (Opposite Party No.2) before the learned Sessions Judge, Saran, in Cr. Revision No.196 of 2012. Copy of the revision petition filed before the learned Sessions Judge, Chapra, has been annexed with the petition as Annexure-3, which clearly shows that only State of Bihar was made Opposite Party in that revision application filed by the complainant. The learned Sessions Judge, Chapra, by order dated 31.08.2012, passed in Cr. Revision No.196 of 2012, set aside the order dated 05.06.2012, passed by the learned Judicial Magistrate, 1st class, Saran, in Complaint Case No.1908 of 2011, dismissing the complaint under Section 203 Cr. P. C.

11. It is not in dispute that neither accused persons (petitioners) were impleaded as Opposite Party in Cr. Revision No.196 of 2012 nor any notice was ever served on them before



passing the order dated 31.08.2012 by the learned Sessions Judge, Saran.

12. Section 401(2) Cr. P.C. speaks that “no order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.”

13. Section 399 Cr. P. C. speaks about the Sessions Judge’s powers of revision. Section 399 (1) Cr. P. C. lays down as follows:

“399. Sessions Judge's powers of revision.--(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.”

14. Section 398 Cr. P. C. speaks about the power of the High Court or the Sessions Judge for ordering further enquiry.

“398. Power to order inquiry.--- On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of section 204 or into the case of any person accused of an offence who has been discharged:
Provided that no Court shall make any direction under this section for inquiry



into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made."

15. The Hon'ble Supreme Court in the case of **P. Sundarrajan and others** (supra) held that the High Court without issuing notice to the respondent before it and without considering the defence available to him, proceeding to consider the material produced by the revision petitioner and directing the Magistrate to proceed with the complaint in accordance with law violated the principles of natural justice as also the law of hearing a party before passing an adverse order.

16. The learned single Judge of this Court in the case of **Rajauddin** (supra) has held Cr. Revision filed without impleading the accused as party in the revision application violated the principles of natural justice and erred in setting aside the order of the Magistrate dismissing the complaint under Section 203 Cr. P. C.

17. From perusal of judgment relied by the counsel for the Opposite Party No.2 in the case of **Rajendra Lal Das** (supra), it appears that the Hon'ble Court after relying on various earlier judgments has held that principles of *audi alterum partem*, which is a general principle, will not be applicable in



revision under Section 398 Cr. P.C. While exercising power of revision against dismissal of complaint under Section 203/204 Cr. P.C., there is no necessity to issue notice to the accused while issuing direction for further enquiry. When a person has been discharged after his appearance in Court, notice must be issued to him in revision preferred against the order of his discharge but the same cannot be a case when a complaint is dismissed for the reason that till accused is summoned, he has no *locus standi* in the case whether in course of enquiry or in a revision preferred against the dismissal of the complaint.

18. But, it is important to mention that the power of revision is exercised by the learned Sessions Judge in terms of Section 399 Cr. P.C. Section 398 Cr. P.C. only speaks of power of High Court or the Sessions Judge to order for further enquiry into the complaint, which has been dismissed under Section 203 or subsection 4 of Section 204 Cr. P.C. or into the case of any person accused of an offence who has been discharged.

19. Section 401(2) Cr. P. C. clearly speaks that no order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.



20. The Hon'ble Supreme Court in the case of *P. Sundarrajan and others* (supra) has held that the High Court without issuing notice to the respondents before it and without considering the defence available to him, proceeding to consider the material produced by the revision petitioner and directing the Magistrate to proceed with the complaint in accordance with law is violative of principles of natural justice and doctrine of *audi alterum partem*. The Opposite Party in revision was held to be entitled to get reasonable opportunity of hearing before passing appropriate order.

21. Therefore, this Court after considering various decisions and points of law, as discussed above, is of the view that the impugned order passed by the learned Sessions Judge, Saran, to the prejudice of the accused (petitioners) without affording opportunity of being heard either personally or by pleader in his own defence, was not in accordance with law and suffers from illegality.

22. Accordingly, the order dated 31.08.2012 passed by the learned Sessions Judge, Saran, in Cr. Revision No.196 of 2012 and the subsequent order dated 06.12.2012 passed by the Judicial Magistrate, 1st class, Saran, in Complaint Case



No.1908 of 2011 (Enquiry No.378 of 2012), are hereby set aside.

23. The learned Sessions Judge, Saran at Chapra, is directed to pass fresh order in accordance with law after affording opportunity of hearing to the accused persons within a period of three months from the date of receipt of a copy of this order.

24. This Cr. Misc. application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	23-01-2017
Uploading Date	21-02-2017
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