

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.3 of 2017

IN

Cr. WJC 300 of 2016

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Om Prakash Jha Son of Late Krishnadeo Jha Resident of Village - Behat Dakshun
Tole, Navtole, P.S. - Jhanjharpur R.S.O.P., District - Madhubani (Bihar).

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Department of Home, Govt. of Bihar, Patna.
3. The Under Secretary, Dept. of Home (Special), Govt. of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Superintendent of Police, Madhubani.
6. The Deputy Superintendent of Police, Jhanjharpur, Madhubani.
7. The Inspector of Police, Jhanjharpur Police Station.
8. The Sub-Divisional Police Officer, Jhanjharpur, Madhubani.
9. The Circle Officer, Lakhnour-cum-PIO, Jhanjharpur, Madhubani.

.... Respondents

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Appearance :

For the Petitioner : Mr. Shashi Nath Jha, Advocate

For the Respondents : Mr. Prabhat Kumar Verma (AAG 3)

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 16-03-2017

Heard.

This civil review application has been filed for reviewing
or recalling the order dated 29.09.2016 passed in Cr.W.J.C. no. 300 of
2016 (*Rajendra Sahay vs. The State of Bihar and others*) by this
Court.

The prayer for review is on the ground that the petitioner
is the most affected person by the said order as he is one of the
accused in the police case which was registered in pursuance of the
aforesaid order dated 29.09.2016 passed in Cr.W.J.C. no. 300 of 2016



whereby the complaint petition filed before the Inspector, Jhanjharpur Police Station, was directed to be treated as F.I.R.

The office has raised a preliminary objection that the Civil Review is not maintainable for reviewing any order passed in criminal writ application in view of the judgment of the Division Bench of this Court in Civil Review no. 07 of 1998 on 12.05.2000, a copy of the same is at flag 'A'.

Learned counsel for the petitioner submits that there is prayer for recall of the order also in the event of non-maintainability of the review petition. Therefore, recall of the order may be considered. Learned counsel has relied on the judgment of the Apex Court in the case of ***Vishnu Agarwal v. State of U.P.*** reported in ***AIR 2011 SC 1232***. In ***Vishnu Agarwal*** case the Hon'ble Apex Court considered the earlier judgment in the case of ***Asit Kumar v. State of West Bengal and others*** reported in ***2009 (1) SCR 469*** and recorded the distinction between recall and review as follows :-

“There is a distinction between a review petition and a recall petition. While in a review petition, the Court considers on merits whether there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party. We are treating this petition under Article 32 as a recall petition because the order passed in the decision in ***All Bengal Licensees Association v. Raghabendra Singh & Ors.*** [2007 (11) SCC 374] cancelling certain



licences was passed without giving opportunity of hearing to the persons who had been granted licences. ”

In Vishun Agarwal case one of the parties, i.e., revisionists did not appear though the counsel for the respondents had appeared and judgment was passed. In the circumstances, the judgment, which was passed, was ordered to be recalled. In the present case, the petitioner was neither a party nor a necessary party to the criminal writ application aforesaid. Hence, prayer for recall of the order passed in criminal writ application is not maintainable. In true spirit the prayer is for “review” on the ground that the impugned order was passed due to suppression of fact. When there is allegation of suppression of fact, only review is maintainable. Moreover, the judgment of the Division Bench is binding on this Court. Hence, this review application is dismissed as not maintainable.

(Birendra Kumar, J)

sudip/-

AFR	
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