

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.448 of 2017

IN

Miscellaneous Jurisdiction Case No. 1982 of 2015

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Md. Israil, S/o Md. Rashid Khan, R/o Village- Garura, P.O.- Deo Markandey, P.S.-
Karakat, Distt- Rohtas. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
 2. The D.G.-cum-I.G. of Police, Bihar, Patna.
 3. The D.I.G. of Police, Rail, Bihar, Patna.
 4. The S.P. Muzaffarpur, Rail, Muzaffarpur. Respondent/s
- =====

Appearance :

For the Appellant/s : Mr. Binod Kumar Sinha, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 12-12-2017

This appeal has been filed under Clause 10 of the Letters Patent challenging the order dated 09.01.2017 passed in M.J.C. No. 1982 of 2015.

2. Certain objections have been pointed out by the office. They are being technical in nature, are ignored.

3. Even though the petitioner has not challenged the original order dated 27.03.2014 passed in C.W.J.C. No. 11937 of 2007 and has only challenged the order passed on 09.01.2017 rejecting the application for restoration i.e. M.J.C. No. 1982 of 2015, but taking note of the question involved in the matter, which is only for restoration of C.W.J.C. No. 11937 of 2007, ignoring all the technicalities, we proceed to decide the issue on merit.

4. C.W.J.C. No. 11937 of 2007 was dismissed on



27.03.2014 for want of prosecution. The explanation given by the counsel for the appellant for his absence on 27.03.2014 was that even though he has filed Vakalatnama on behalf of the petitioner, but as “No Objection” was not endorsed in the Vakalatnama by the previous advocate, his name did not appear in the cause list, as such, he did not mark the case and, therefore, the case was dismissed for want of prosecution.

5. Merely on the technicalities the litigant cannot suffer. He has a right to have writ petition adjudicated on merit, particularly, when it pertains to his fundamental and constitutional right.

6. Taking note of all these factors, we allow this appeal, quash the order dated 09.01.2017 passed in M.J.C. No. 1982 of 2015, allow M.J.C. No. 1982 of 2015 and recall the order dated 27.03.2014 passed in C.W.J.C. No. 11937 of 2007 and restore C.W.J.C. No. 11937 of 2007 to its original file.

7. List C.W.J.C. No. 11937 of 2007 before an appropriate Bench for orders.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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