

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.153 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

- =====
1. Niraj Chandrayavi, Son of Nawal Kishore Prasad, Partner and one of the directors of M/S Chandriyavi Construction Pvt. Ltd, having its registered Office at 410. Ashina Plaza, Budh Marg, P.S. Kotwali, District Patna. Present registered office- MM Enclave, Saket Vihar, Mitra Mandal Colony, P.O. - Anishabad, Patna- 800002, Resident of Flat No. 104, Pranav Mension , Park Road, Kadamkuan, P.S.- Kadamkuan, District- Patna.

.... Petitioner

Versus

1. The State of Bihar
2. Niranjan Prasad, Son of late Jadunandan Prasad, resident of Maulabag, Idgah Road, Ara, P.S.- Ara, Nawad, District- Bhojpur.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Amit Kumar Singh
For the State	:	Mr. Anish Chandra
For O.P. No. 2	:	Mr. Mohit Shrivastava

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date: 16-05-2017

Heard learned Counsel for the petitioner, learned Additional Public Prosecutor representing the State and learned Counsel appearing on behalf of Opposite Party No. 2.

2. The petitioner is aggrieved by an order, dated 02.12.2016, passed by learned Chief Judicial Magistrate, Ara, in Misc. Case No. 121 of 2016, whereby he has withdrawn Case No. 381(C) of 2009 (Trial No. 1623 of 2016) from the Court of Sri R. Prasad, learned Judicial Magistrate, 1st Class,



Ara, and kept that in his personal file for disposal.

3. Assailing the impugned order, learned Counsel for the petitioner has submitted that earlier the learned District Judge, Bhojpur, at Ara, exercising power under Section 408 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), by an order, dated 02.07.2013, had transferred the said complaint case, after recalling it from the Court of Sri Manoj Kumar, learned Judicial Magistrate, 1st Class, Ara, to the Court of Smt. Namita Singh, learned Judicial Magistrate, 1st Class, Ara, for trial and disposal. Subsequently, the learned District Judge, Bhojpur, at Ara, had transferred the said case to the Court of Sri R. Prasad, learned Judicial Magistrate, 1st Class, Ara, for disposal, exercising power under Section 408 of the Code.

4. Learned Counsel for the petitioner contends that once the case was transferred by learned District Judge, Bhojpur, at Ara, in exercise of power under Section 408 of the Code, the learned Chief Judicial Magistrate, Ara, could not have exercised power under Section 410 of the Code to recall the said case. He has submitted, referring to Section 410 of the Code, that the power of the learned Chief Judicial Magistrate to withdraw any case from or recall any case is limited to such cases only, which have been made over by the Chief Judicial Magistrate to any Magistrate subordinate to him.



The said case was not made over by the learned Chief Judicial Magistrate, Ara, to attract sub-Section (1) of Section 410 of the Code. The case was, admittedly, not made over to any Magistrate under sub-Section (2) of Section 192 of the Code; rather, it was transferred by the learned District Judge, Bhojpur, at Ara, exercising power under Section 408 of the Code to a particular Court and, therefore, sub-Section (2) of Section 192 of the Code also can have no application.

5. Learned Counsel appearing on behalf of Opposite Party No. 2 has submitted that though there may be irregularity in the order of the learned Chief Judicial Magistrate, Ara, in withdrawing/recalling the said complaint case from the Court of Sri R. Prasad, learned Judicial Magistrate, 1st Class, Ara, but the said order cannot be said to be illegal, vitiating the trial. He has submitted that the said order does not require any interference in criminal revisional jurisdiction.

6. I find substance in the submission made on behalf of the petitioner. The case was never made over by the learned Chief Judicial Magistrate, Ara, to the Magistrate, under Section 192 (2) of the Code. The case was otherwise not made over by the Chief Judicial Magistrate to the Court of Sri R. Prasad, learned Judicial Magistrate, 1st Class, Ara. The language of Section 410 of the Code is clear and ambiguous,



which reads thus:-

"410. Withdrawal of cases by Judicial Magistrates. —(1) Any Chief Judicial Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

(2) Any Judicial Magistrate may recall any case made over by him under subsection (2) of section 192 to any other Magistrate and may inquire into or try such case himself."

7. Once the case was transferred under the orders of the learned District Judge, Bhojpur, at Ara, in my view, the learned Chief Judicial Magistrate, Ara, could not have acted in exercise of power under Section 410 of the Code by recalling the case to be kept in his personal file, because the said case cannot be said to have been made over by him before the Magistrate to whom the case was transferred by learned District Judge, Bhojpur, at Ara, exercising power under Section 408 of the Code.

8. The impugned order, therefore, cannot sustain and is accordingly set aside.

9. In the facts and circumstances of the case,



the learned District Judge, Bhojpur, at Ara, is directed to ensure that the case and the trial of the said complaint case is placed before appropriate Court for expeditious disposal.

10. This application is accordingly allowed.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
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