

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Revision No.934 of 2014**

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1. Laxmi Prasad Mandal @ Laxmi Mandal S/o Late Murali Mandal  
Resident of Village Khaira, Police Station Katihar (Muffasil), District  
Katihar.

.... .... Petitioner/s

Versus

1. The State of Bihar.  
2. Lakhi Devi W/o Laxman Parihar Resident of Village Khaira Chikani  
Ghat, Police Station Katihar (Muffasil), District Katihar.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Bimal Kumar  
For the Respondent/s : Mr. J.N. Thakur (App)  
For the Opposite party : Raghvendra Kumar Singh

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI**  
**SHARAN SINGH**  
**ORAL ORDER**

3      16-02-2017                      Heard learned counsel for the parties.

2. The petitioner is aggrieved by an order dated 05.08.2014 passed by the learned Chief Judicial Magistrate, Katihar in C. A. No. 492 of 2014, whereby he has taken cognizance of the offences punishable under Section 376 of the Indian Penal Code and summoned the petitioner as an accused.

3. Before I refer to the ground taken for challenging the said order, dated 05.08.2014, I need to take note of the certain facts, which are not in dispute.

4. The Opposite party No.2 had filed a complaint case being Complaint case No.2662 of 2012 in the Court of learned Chief Judicial Magistrate, Katihar making out a case



of commission of offence under Section 376 of the Indian Penal Code. Based on the said complaint petition, an FIR of Katihar (M) P. S. Case No. 94 of 2013 came to be registered on 28.06.2013. The police upon completion of investigation submitted final report as not true. Thereafter, the Opposite party No.2 filed a protest-cum-complaint petition. Learned Chief Judicial Magistrate, however, refused to take cognizance of the offence by an order dated 10.02.2014 and dismissed the complaint petition filed by Opposite party No.2.

5. Against the said order dated 10.02.2014, the Opposite party No.2 filed Criminal Revision No. 73 of 2014 in the Court of learned Sessions Judge, Katihar. This is not in dispute that in Criminal Revision No. 73 of 2014 (Lakhi Devi Vs. State of Bihar) the petitioner was not impleaded as a party. No notice was ever issued to him. Learned Sessions Judge by an order, dated 30.06.2014, allowed the revision application, setting aside the order dated 10.02.2014, which was passed by the learned Chief Judicial Magistrate, Katihar, dismissing the complaint petition. After setting aside the order, dated 10.02.2014, learned Sessions Judge, Katihar remitted the matter back to the learned Chief Judicial Magistrate for passing an order afresh, whereafter, the impugned order dated 05.08.2014 has been passed by the learned Chief Judicial Magistrate, Katihar.



6. Both the orders, i.e. 30.06.2014 passed by the learned Sessions Judge, Katihar in Criminal Revision No. 73 of 2014 and order dated 05.08.2015 passed by the learned Chief Judicial Magistrate, Katihar in C. A. Case No. 492 of 2014 are under challenge in the present criminal revision application.

7. Learned counsel appearing on behalf of the petitioner, assailing the impugned orders has submitted that the petitioner did not have knowledge about filing of the criminal revision application till he was summoned by the Court of learned Chief Judicial Magistrate, Katihar by the order dated 05.08.2014. It has, accordingly, been submitted that this is the reason why both the orders have been challenged in the present criminal revision application.

8. Opposite party No.2 has entered appearance through learned Counsel Mr. Ragvendra Kumar Singh. He has not disputed the fact before passing of the order by the learned Sessions Judge, Katihar dated 30.06.2014, the petitioner was not noticed.

9. Though there is some delay in filing of the present criminal revision application to the extent it relates to challenge to the order dated 30.06.2014, since this is not in dispute that the petitioner was not made aware of the filing of the criminal revision application nor order dated



30.06.2014, delay caused in making a challenge to the order dated 30.06.2014 is, hereby, condoned. The said order dated 30.06.2014 is beyond jurisdiction on the face of it inasmuch as it has been passed without giving the petitioner an opportunity of hearing. Consequently the order dated 05.08.2014 passed by the learned Chief Judicial Magistrate, Katihar is also set aside.

10. The matter is remitted back to the learned Sessions Judge, Katihar for passing an order afresh after giving the petitioner opportunity of hearing.

11. This application stands allowed.

**(Chakradhari Sharan Singh, J)**

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