

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44465 of 2014

Arising Out of PS.Case No. -90 Year- 2007 Thana -BETTIAH TOWN District-
WESTCHAMPARAN(BETTIAH)

- =====
1. Ganesh Prasad Son of Late Shambhu Prasad At present Resident Sarswati Nagar, Urbasi Cinema Road, Bettiah, P.O. + P.S. - Bettiah (Town), District - West Champaran.
 2. Vijay Kumar Shrivastava Son of Late Satyadeo Prasad Resident of Mohalla - Koeri Tola, Bettiah, P.O. + P.S. - Bettiah (T), District - West Champaran.
 3. Madhusudan Prasad Son of Madan Prasad Srivastava Resident of Mohalla - New Colony, Bettiah, P.S. - Bettiah (Town), District - West Champaran.
- Petitioners

Versus

The State of Bihar

..... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Kumar Shrivastva

For the Opposite Party/s : Mr. Rana Randhir Singh (App)

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER

5 30-11-2017

Heard learned Counsel for the petitioner as well as

the learned Counsel for the State.

The petitioners seek quashing of the order dated 7.9.2010 passed by CJM Bettiah, West Champaran in Bettiah (Town) PS Case No. 90 of 2007, thereby taking cognizance of the offence under Sections 323, 341 and 504/34 of the IPC.

The brief fact giving rise to the case is that the informant submitted an informatory petition to the police that his cousin, a practicing advocate along with the informant, always use to mentally torture him by making filthy comments and started abusing him and one of the accused gave fist blow over his chest and pushed him down. Other lawyers intervened and



thereafter he was saved.

The police after investigation submitted charge sheet on 31.5.2007 for the alleged occurrence dated 24.3.2007. The CJM Bettiah took cognizance of the offence on 7.9.2010.

Learned Counsel for the petitioners submits that in the order dated 7.9.2010 thereby cognizance the learned CJM has not mentioned any reason for condoning the delay, only condoning the delay without assigning any reason though the police submitted charge sheet much earlier in the year 2007 itself. He further submits that amongst all the offences in which cognizance has been taken the gravest offence is under Section 504 IPC for which maximum period of sentence prescribed in the IPC is two years with fine and cognizance is barred under Section 468 of the Cr.P.C. as cognizance has been taken after lapse of three years from the alleged offence, however, it may be condoned under Section 473 Cr.P.C. but by giving reason for condoning the delay if the delay is satisfactorily explained or in the interest of justice. He places reliance on the case of *State of Himachal Pradesh vs. Tara Dutt & anr.* reported in *AIR 2000 SC 297*.

Learned Counsel appearing on behalf of the State submits that there is provision for condoning delay by extending



the period of limitation.

Having considered the rival submission and on perusal of the record the Court finds that the cognizance definitely has been taken beyond the period of limitation. In the present matter cognizance cannot be taken after expiry of three years from the date of the offence. Though the period of limitation may be extended under Section 473 Cr.P.C. if the Court is satisfied giving reasons considering the facts and circumstances of the case and the delay being properly explained or if taking cognizance is necessary in the interest of justice, but in the present case no such reason has been subscribed by the Magistrate for extending the period of limitation. The relevant portion of the case of *Tara Dutt* (supra) in para 7 of the judgment is quoted hereinbelow:-

“7. Section 473 confers power on the Court taking cognizance after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and that it is necessary so to do in the interest of justice. Obviously, therefore in respect of the offences for which a period of limitation has been provided in [Section 468](#), the power has been conferred on the Court taking cognizance to extend the said period of limitation where a proper and satisfactory explanation of the delay is available and where the Court taking cognizance finds that it would



be in the interest of justice. This discretion conferred on the Court has to be exercised judicially and on well recognised principles. This being a discretion conferred on the Court taking cognizance, wherever the Court exercises this discretion, the same must be by a speaking order, indicating the satisfaction of the Court that the delay was satisfactorily explained and condonation of the same was in the interest of justice. In the absence of a positive order to that effect it may not be permissible for a superior Court to come to the conclusion that the Court must be deemed to have taken cognizance by condoning the delay whenever the cognizance was barred and yet the Court took cognizance and proceeded with the trial of the offence..... “

In the impugned order the Magistrate has not indicated his satisfaction for condoning the delay by extending the period of limitation or expressing the explicit view regarding why it is in the interest of justice to take cognizance in the matter in case being run by limitation, so the cognizance order dated 7.9.2010 by the CJM West Champaran Bettiah in Bettiah (Town) PS Case No. 90 of 2007 as also the entire subsequent criminal proceeding is set aside.

The application stands allowed.

Snkumar/-

(Arun Kumar, J.)

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