

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51755 of 2013

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Hira Lal Yadav S/O Rajdev Yadav Resident Of Village- Narainpur, P.S- Bagaha,
District- West Champaran Petitioner/s

Versus

1. The State Of Bihar
2. Harishankar Kushwaha S/O Mishri Kushwaha Resident Of Village- Narainpur,
P.S- Bagaha, District- West Champaran. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Richa Rai
Mrs. Usha Kumari No. 1
For the Opposite Party/s : Mr. Pranav Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

Date: 18-07-2017

Heard learned counsel for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 14.09.2011, passed by 2nd Additional Sessions Judge, West Champaran, Bettiah in Criminal Revision Case No. 179 of 2010, whereby the petition filed by opposite party no. 2 was allowed and the trial Court was directed to pass an order in the light of section 323 of the Cr. P.C.

The contention of the learned counsel for the petitioner is that the order impugned has been passed without giving opportunity of hearing to the petitioner. The order has been passed in absence of the petitioner, which is illegal and violative of section 209



Cr. P.C. As such, the order dated 14.09.2011 is fit to be quashed. Learned counsel in support of his submissions has relied upon the judgments of this Court reported in **2009(3) P.L.J.R. 489** and **2008(1) P.L.J.R. 272**.

From perusal of the materials available on record and looking into the facts of the case at this stage, this Court finds that the arguments advanced by the learned counsel for the petitioner has force. Before passing the order impugned petitioner should have been given an opportunity of hearing. The judgments passed by this Court reported in **2009(3) P.L.J.R. 489** and **2008(1) P.L.J.R. 272** are quite explicit on the issue.

In view of the above, the impugned order is not sustainable in law and is accordingly quashed. The matter is remanded back to the Court below for passing the order afresh in accordance with law after giving an opportunity of hearing to the petitioner. Since petitioner has approached this Court, no fresh notice is required to be served upon him.

The application accordingly stands allowed.

(Arvind Srivastava, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	25.04.2017
Uploading Date	19.07.2017
Transmission Date	19.07.2017

