

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.54359 of 2013

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

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Awadhesh Kumar Upadhyay, S/O Late Dharmnath Upadhyay, Resident of Mohalla Vijay Nagar, Road No. 3, Hanuman Nagar, P.O. + P.S. Patrakar Nagar, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Mahendra Prasad, S/O Baldeo Mahto, R/O Mohalla Vijay Nagar, Road No. 3 Hanuman Nagar, P.O. + P.S. Patrakar Nagar, District Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Tiwary, Advocate.
For the Opposite Party/s	:	Mr. Nagendra Upadhyay, Advocate. Mr. Mahendra Pathak, Advocate.
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 07-07-2017

Learned counsel for the petitioner and Opposite Party

No. 2 are ready for disposal of Criminal Revision No. 271 of 2012, at the admission stage.

2. Heard learned counsel for the petitioner, learned counsel for the opposite party no.2 and the learned counsel for the State.

3. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 28.10.2013 passed in Criminal Revision No. 271 of 2012, whereby the learned Additional Sessions Judge-VI, Patna, allowed the aforesaid criminal



revision preferred against the order dated 25.01.2012 passed in Case No. 1563(M) of 2011, by the Sub-Divisional Magistrate, Sadar, Patna, converting the proceeding initiated under Section 144 Cr.P.C. into Section 133 Cr.P.C., in which, the petitioner was member of first party whereas the opposite party no. 2 was member of second party.

4. Learned counsel for the petitioner submits that, in fact, on the basis of the application of the petitioner, proceeding under Section 144 Cr.P.C. was initiated numbered as Case No. 1563(M) of 2011, in which, opposite party no. 2 was the member of second party. The Sub-Divisional Magistrate, Patna, converted the proceeding of Section 144 Cr.P.C. into Section 133 Cr.P.C. vide order dated 25.01.2012. Thereafter, the opposite party no. 2, who was the second party in the proceeding, filed the Criminal Revision No. 271 of 2012. without making party to the petitioner who was first party in the proceeding of 144 Cr.P.C., which was allowed by the court of Additional S.J. VI, Patna without hearing the petitioner. As such, the impugned order passed against the petitioner is against the principle of natural justice and bad in law.

5. Learned counsel for the opposite party no. 2 fairly submitted that petitioner, who was the first party in proceeding under Section 144 Cr.P.C., was not made party in the Criminal Revision No.



271 of 2012 and the same was allowed without hearing him.

6. Since the petitioner, was the first party in the proceeding under Section 144 Cr.P.C. numbered as Case No. 1563 (M) of 2011, which was converted into Section 133 Cr.P.C. on 25.01.2012 by the S.D.M. Sadar, Patna. As such, the impugned order passed in Cr. R. No. 271 of 2012 preferred by the O.P. No. 2 setting aside the order dated 25.01.2012 without hearing the petitioner is against the principle of natural justice and bad in law.

7. As such the impugned order dated 28.10.2013 passed in Cr. R. No. 271 of 2012 is quashed with a direction to the court of Additional S.J. VI, Patna to pass the order afresh after hearing the petitioner on merit.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.07.2017
Transmission Date	12.07.2017

