

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1144 of 2016

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

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1. Manoj Kumar Ojha,
 2. Shashikant Ojha,
 3. Sonu Ojha @ Sonu Kumar Ojha, all are s/o of late Mithilesh Kumar Ojha, R/o village- Baraka Singhanpur, P.S. Smiari, District - Buxar
- Petitioner/s

Versus

1. The State of Bihar
 2. Vindhychal Ojha, S/o Rangnath Ojha, R/o village - Baraka Singhanpur, P.S. Smiari, District - Buxar
- Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Advocate with
Mr. Alok Kumar Jha, Advocate

For the Opposite Party No.1: Dr. Rabindra Kumar, APP

For the Opposite Party No.2: Mr. Gopal Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-09-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 30.09.2015 passed by the Additional Sessions Judge, 6th, Buxar, in Cr. Revision No.195 of 2013 by which he has set aside the order dated 27.10.2009 passed by the SDM, Dumraon, in Case No.51(M) of 2009.

2. Heard counsel for the parties.

3. Counsel for the Petitioners submits that there was no valid service of notice on them with regard to initiation of proceeding under Section 144 Cr.P.C. on 14.02.2009. No notice was



ever served on them. In the meantime, petition was filed by Opposite Party No.2 before the SDM on 17.02.2009 alleging that Petitioners are making construction over the disputed land by violating the order passed by the Magistrate on 14.02.2009 and made prayer to initiate proceeding under Section 188 Indian Penal Code against the Petitioners. Learned Magistrate has refused to initiate proceeding on the ground that there is no valid service of notice on the Petitioners. But, the revisional Court has set aside the order of the learned SDM and after considering that notice was validly served ordered to initiate proceeding under Section 188 Indian Penal Code.

4. Counsel for the Petitioners further submits that the revisional Court has to see only legality, propriety and correctness of the order. He was not empowered to act in the manner as is done in appellate jurisdiction by looking into the facts of the case along with other documents under the jurisdiction of Section 397 Cr.P.C.

5. Counsel for the Opposite Party No.2 submits that police has given report before the SDM that by confidential information he got knowledge that notice was validly served but still construction was going on. The learned SDM ignoring the aforesaid report of the police has dropped the proceeding. Counsel for the Opposite Party No.2 further submits that revisional Court has taken



into consideration the report of the police and thereafter set aside the order of the Magistrate.

6. Counsel for the State submits that there is no illegality in the impugned order.

7. This Court after hearing counsel for all the parties and looking into the record as well as impugned order finds that initially on the petition filed by the Opposite Party No.2, a proceeding under Section 144 Cr.P.C. was initiated by order dated 14.02.2009 with regard to the land as mentioned in the aforesaid order. Another petition was filed by the Opposite Party No.2 before the SDM, Dumraon, on 17.02.2009 making allegation that Petitioners are making construction over the property by violating the order of the Magistrate dated 14.02.2009. Learned Magistrate called for a report from the police. The police mentioned in the report that police learnt confidentially by two witnesses that these Petitioners were making construction even after knowledge of the order passed by the learned SDM dated 14.02.2009.

8. Learned Magistrate after hearing both the parties was not satisfied with the report of the police. Learned Magistrate has mentioned in the order dated 27.10.2009 that there was no cogent proof that notice was served on the petitioners prior to 17.02.2009. The SDM, accordingly, rejected the petition filed by the Opposite



Party No.2 for initiation of proceeding under Section 188 Indian Penal Code. Thereafter, the Opposite Party No.2 filed Criminal Appeal against the order dated 27.10.2009 passed by the Magistrate before the learned Sessions Judge vide Cr. Appeal No.86 of 2009, which was allowed and order of learned Magistrate was set aside. The Petitioners thereafter filed Cr. Misc. No.13773 of 2013 challenging the order passed by the Court below in Cr. Appeal No.86 of 2009, which was allowed by this Court holding that Appeal was not maintainable and liberty was given to the Petitioners to challenge the order of SDM before appropriate forum. Thereafter, Opposite Party No.2 filed Cr. Revision before the Sessions Judge vide Cr. Revision No.195 of 2013 and learned Additional Sessions Judge, 6th, Buxar, by order dated 30.09.2015 has set aside the order of the SDM, Buxar, dated 27.10.2009, and directed the Magistrate to initiate proceeding under Section 188 Indian Penal Code against the Petitioners.

9. During course of argument, counsel for the Petitioners has drawn attention of the Court to Annexure-6, which is information received by them under Rights to Information Act, wherein, it has been mentioned that notice was served on 14.02.2009 on the Petitioners, but there is no any service report available on the record whether notice was validly served on the Opposite Party No.2



or not. It is further mentioned in the aforesaid report that both parties were present on 28.02.2009 and thereafter on all subsequent dates as mentioned in the report.

10. In this manner, from Annexure-6, it is apparent that there was no any service report of valid service of notice on Petitioners prior to 17.02.2009. Learned Magistrate while hearing the petition dated 17.02.2009 filed on behalf of the Opposite Party No.2 for initiation of proceeding under Section 188 Indian Penal Code had called for a report from the police which was received. The police had mentioned in the report that police enquired confidentially about service of notice on Petitioners and learnt that notice was validly served. The aforesaid report sent to the SDM dated 30.02.2009 is enclosed as Annexure-4. The learned SDM after looking into the aforesaid report came to the conclusion that there was no any cogent proof of service of notice on the Petitioners and thereafter rejected the petition filed by the Opposite Party No.2 for initiation of proceeding under Section 188 Indian Penal Code against the Petitioners.

11. This Court after looking into Anneuxre-4 as well as Annexure-6 finds that there is no cogent proof that notice was ever validly served on the Petitioners prior to filing of petition dated 17.02.2009 by Opposite Party No.2, to initiate proceeding against the



Petitioners under Section 188 Indian Penal Code for violating order of learned Magistrate.

12. The Additional Sessions Judge appears to have travelled beyond his jurisdiction while exercising power under Section 397 Cr.P.C. and has entered into disputed question of facts and after considering the report of the Police and interpreting the same in his own way, as if he was hearing appeal, has held that notice was validly served. Thereafter, the revisional Court has set aside the order of the learned Magistrate.

13. This Court is of the view that Additional Sessions Judge while exercising revisional jurisdiction is only required to see legality, propriety and correctness of the impugned order. He is not required to go into disputed question of facts. This Court from perusal of Anneuxre-4 and 6 finds that there was no cogent evidence of valid service of notice on the Petitioners prior to filing of petition dated 17.02.2009 by the Opposite Party No.2.

14. In view of such, impugned order passed by the learned Additional Sessions Judge, 6th, Buxar, is not sustainable in law.

15. Accordingly, impugned order dated 30.09.2015 passed by the Additional Sessions Judge, 6th, Buxar, in Cr. Revision No.195 of 2013 is hereby quashed. The subsequent proceeding



initiated by the Magistrate against the Petitioners under Section 188 Indian Penal Code in terms of the impugned order is also quashed.

16. This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18-09-2018
Transmission Date	18-09-2018

