

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.1015 of 2018

Arising Out of PS. Case No.-2944 Year-2011 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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Bipin Bihari Lal @ Bipin Lal Shrivastava, @ Bipin Lal, Son of Late Khub Lal Prasad, Resident of Hajiapur Ward No.26, Near Kamla Roy Collage, Arar Mor P.S.- Gopalganj, District- Gopalganj, presently residing at Village- Bideshi Tola, P.S.- Thawe, District- Gopalganj.

... .. Petitioner

Versus

1. The State of Bihar.
2. Amit Kumar Shrivastava, Son of Anil Kumar Shrivastava, Resident of Village- Gopalmath, P.S.- Thawe, District- Gopalganj.

... .. Respondents

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Appearance :

For the Petitioner/s	:	M/S Soni Shrivastava,. Indrajeet Bhushan, Advs.
For the Respondent/s	:	Mr. Kumar Virendra Narayan, APP
For O.P. No.2	:	Mr. Vijay Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

- 3 06-12-2018 This revision application has been filed against the order dated 8.6..2018 passed by learned District and Sessions Judge, Gopalganj in Cr.Revision No. 597 of 2018, whereby and whereunder he has allowed the revision application and set aside the order dated 25.4.2018 passed by S.D.J.M., Gopalganj in Complaint Case No. 2944 of 2011/Trial No. 577 of 2018, by which learned S.D.J.M. has discharged the petitioner, and remanded the matter to pass fresh order by giving reasonable opportunity to hear the case while a fresh petition filed during adducing evidence.

The case, in short, is that a complaint case was filed



by opposite party No.2 against the petitioner with an allegation that on 1.12.2011 the accused had gone to his door and told that he is the Regional Officer of Planto Company and his Company has got the job of planting Mango, Sisam and Mahagoni trees in the villages of Thawe and Uchkageon Block after taking Rs.5000/- from the cultivator. It was stated that the accused was known to the complainant from before. The accused told him that they have to do plantation in at least one acre of land and when the tree will mature they will get the entire cost after deducting the cost of the plant. Upon knowing about the scheme, the complainant agreed for plantation on his land at Gopalmath. Thereafter he gave Rs.5000/- to the accused and when he asked for the receipt, the accused told that the receipt has finished and he will give him the receipt within one or two days. On believing the accused he gave Rs.5000/- along with copy of the documents of the land to the accused. On 5.12.2011, the accused took him to Siwan and asked him to sign over a blank stamp paper of Rs.500/- and when the complainant refused to do so, then he persuaded him and told that on that paper the agreement would be prepared and within two days plantation would be done on his field and on persuasion he signed over the paper. On 15.12.2011, when he went at the door



of the accused then he saw that 3-4 persons were abusing the accused and were demanding their money back, then the complainant came to know that the accused on the pretext of false agreement has taken his signature on blank paper and has cheated him for Rs.5000/- and on demand he neither returned the money nor he returned the blank paper and the documents of his land and hence he lodged the complaint.

After inquiry of the complaint petition summons was issued against the accused persons for offence under Section 417 IPC and they have appeared when the case was pending for evidence of the complainant and as no witness was produced on behalf of complainant the evidence of complainant was closed vide order dated 25.1.2018. It further appears that thereafter on 3.2.2018 the complainant has filed a petition for recall of the order dated 25.1.2018 and the same was fixed for orders on 25.4.2018 and on 25.4.2018 learned S.D.J.M., Gopalganj has rejected the petition of opposite party No.2 and discharged the accused persons.

Being aggrieved by the same opposite party No.2 has preferred Cr.Revision No. 97 of 2018 before District and Sessions Judge, Gopalganj, who by his impugned order dated 8.6.2018 set aside the order dated 25.4.2018 passed by learned



S.D.J.M., Gopalganj and remitted back the case to look into the matter afresh and pass fresh order after giving reasonable opportunity of being heard.

The aforesaid order has been challenged by the petitioner mainly on the ground that the revisional court has not given an opportunity to the petitioner of being heard and in the back of the petitioner the impugned order has been passed, which is apparently illegal and improper and the same has been assailed by citing several judgments of Hon'ble Apex Court and this High Court and learned counsel for the petitioner has cited a decision of Hon'ble Apex Court in the case of Gurdev Singh vs. Surinder Singh and others : (2015) 3 SCC 773 in support of her contention.

Heard learned counsel for the State and learned counsel for opposite party No.2, who could not point out that petitioner was heard before passing of the impugned order.

Having heard both sides and on perusal of the record it appears that petitioner was not heard before passing of the impugned order by learned District and Sessions Judge and the Hon'ble Apex Court in Gurdev Singh's case (supra), as cited by learned counsel for the petitioner, in paragraphs 8 to 10 has held as follows :



“8. Mr. Luthra, learned Senior Counsel for the petitioner raised only one contention before us. He submitted that the Additional CJM dismissed the complaint on 19.1.2009. The complainants carried a revision to the Additional Sessions Judge. By order dated 6.7.2010, the Additional Sessions Judge set aside the order dated 19.1.2009 and remanded the complaint to the Additional CJM with a direction to hold further enquiry. The counsel submitted that the petitioner-accused was, however, not given a hearing at that stage, which was a must. In this connection, he relied on *Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel*. The counsel submitted that it is therefore necessary to quash the proceedings as they are vitiated on account of failure to give a hearing to the petitioner-accused by the Revisional Court while setting aside the dismissal of the complaint.

9. We find substance in this submission. Dismissal of the complaint terminates criminal proceedings against the accused. If the complainant carries the matter further by filing a revision and the Sessions Court sets aside the dismissal order and remands the matter to the Additional CJM for fresh



enquiry, the complaint is revived. In this connection, it is necessary to refer to Section 401 of the Code which lays down the High Court's powers of revision. Sub-section (2) thereof states that:

“401.(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.”

Section 399 of the Code refers to the Sessions Judge's powers of revision. Sub-section (2) thereof states that :

“399. (2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.”

10. Thus, it was obligatory on the Additional Sessions Judge to hear the accused before setting aside the order of dismissal of the complaint in his revisional jurisdiction. Of



course, once the matter is remanded to the Additional CJM, the accused will have no right of hearing because at pre-process stage, the law does not give him any such right. It is only in the aforementioned situation that the accused is entitled to a hearing.”

Considering the aforesaid facts and circumstances, the impugned order passed by learned District and Sessions Judge suffers from impropriety and cannot be sustained in the eye of law.

Accordingly, the impugned order dated 8.6.2018 passed by District and Sessions Judge, Gopalganj is set aside and the matter is remitted back to the learned District and Sessions Judge, Gopalganj for hearing the parties afresh before passing any final order.

In the result, this revision application is allowed.

(Vinod Kumar Sinha, J)

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