

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16526 of 2018

Arising Out of PS. Case No.-35 Year-2017 Thana- MAHILA P.S District- West Champaran

Nazarun Nesha, W/o Abbas Masuri, resident of Village- Raibari Mahuawa
Tola- Bhulahwa, P.S.- Chautarwa, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Munna, S/o Hasnat.
3. Salaiddin, son of Nezamuddin.
4. Nayeem, son of Late Rashid. All resident of Village- Raibari Mahuawa, Tola- Bhulahwa, P.S.- Chautarwa, District- West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vijay Kr Singh No. 1
For the Opposite Party/s : Mr. Sri Ashok Kumar Singh

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 10-09-2018 Heard learned counsel for the parties.

It is not in dispute that on the date when the final form was being considered by the learned S.D.J.M., Bagaha, West Champaran, the protest petition filed by the complainant, who is the petitioner in this case, was available on the record. It is also not in dispute that no order whatsoever has been passed on the protest petition filed by the complainant. While considering the final form learned S.D.J.M. directed the office to send the records of the case in the record room. It is the grievance of the petitioner that her protest petition was required to be treated as a complaint case and she should have been given opportunity to adduce evidence whereupon an appropriate order could have



been passed by the learned S.D.J.M. but the same has not been done in the present case.

Learned counsel representing the Opposite Party Nos. 2 to 4 submits that the final form was accepted by learned S.D.J.M. only after hearing the petitioner and therefore, by virtue of the acceptance of the final form even the protest petition will be deemed to have been considered and disposed off.

Having heard learned counsel for the parties, this Court is unable to accept the submission of learned counsel representing the Opposite Party Nos. 2 to 4. It is an admitted position that no order whatsoever has been passed by the learned S.D.J.M. indicating consideration of the protest petition. If no consideration has been given to the protest petition filed by this petitioner on the date when the final form was being considered, it cannot be assumed that acceptance of final form would amount to consideration of the protest and the order accepting the final form will be taken as rejection of the protest petition. Such submission cannot be accepted. It is well settled in law that a protest petition has to be proceeded as a complaint case and the procedures as prescribed for recording the statement on oath of the complainant and the inquiry witnesses



have to take place before passing an appropriate order either of dismissal under Section 203 of the Cr.P.C. or of issuance of process under Section 204 of the Cr.P.C.

This application is allowed. The impugned order passed by learned Sessions Judge, West Champaran, Camp Court at Bagaha in Cr. Rev. No. 33 (C) of 2017 dated 13.12.2017 being wholly illegal, arbitrary and bad in law is hereby set aside.

Let the protest petition of the petitioner be considered by the court below in accordance with law.

(Rajeev Ranjan Prasad, J)

avin/-

U		T	
---	--	---	--

