

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.110 of 2018

Arising Out of PS Case No.-31 Year-2015 Thana- SIMULTALLA District- Jamui

Govind Yadav, Son of Late Lallu Yadav, Resident of Village- Siya Tanr, P.S.-
Simultalla, District- Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sukhdeo Yadav, Son of Rupan Yadav.
3. Doman Yadav, Son of Jagan Yadav.
4. Chandu @ Chandan Yadav, Son of Nundeo Yadav.
5. Sunita Yadav, Wife of Sri Sukhdeo Yadav.
6. Dulari Devi, Wife of Basudeo Yadav,
All Resident of Village- Siya Tanr, P.S.- Simultalla, District- Jamui.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Prakash Mahto, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O Ps No. 2 to 6	:	Mr. Bharat Lal, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 24-09-2019

Heard learned counsel for the petitioner; learned APP
for the State and learned counsel for the opposite parties no. 2 to
6.

2. The petitioner has moved the Court under Sections
397 and 401 of the Code of Criminal Procedure, 1973 against the
order dated 11.12.2017 passed by the 2nd Additional Sessions
Judge, Jamui in Cr. Revision No. 43 of 2016, by which the order
taking cognizance dated 18.04.2016 passed by the Chief Judicial
Magistrate, Jamui against the opposite parties no. 2 to 6 has been
set aside.



3. Learned counsel for the petitioner submitted that he was the informant of Simultalla P S Case No. 31 of 2015 and after investigation, the police had submitted final form against all the accused but the Chief Judicial Magistrate, Jamui after perusing the material had taken cognizance noting that there was material in paragraphs no. 1, 8, 9, 10, 11 and 12 as also injury report to take cognizance against the opposite parties no. 2 to 6, which he did. Learned counsel submitted that perusal of the case diary would indicate that at the time of taking cognizance, the Court of the Chief Judicial Magistrate, Jamui had rightly taken cognizance and the revisional Court of the 2nd Additional Sessions Judge, Jamui had erroneously interfered in the matter. It was submitted that even if some witnesses have stated in favour of opposite parties no. 2 to 6, the same would not permit the Court at the time of taking cognizance to finally take a view with regard to either innocence or guilt of the party. It was submitted that law relating to cognizance is settled, inasmuch as, even if *prima facie* a case is made out, the Court is required to proceed and not scuttle the prosecution. In the present case, it was submitted that there is sufficient material which rightly the Chief Judicial Magistrate, Jamui had taken note of and taken cognizance, despite the police having wrongly submitted final form against the accused.



4. Learned APP, from the case diary, submitted that what has been recorded in the order of the Chief Judicial Magistrate, Jamui is borne out from the materials collected during investigation and reflected in the case diary, especially at paragraphs no. 1, 8, 9, 10, 11 and 12. It was submitted that the 2nd Additional Sessions Judge, Jamui has erroneously written in the order impugned that except for paragraph no. 1, there is no material in the other paragraphs against the opposite parties no. 2 to 6, which is an error of record. Learned APP fairly submitted that the revisional order cannot be sustained.

5. Learned counsel for the opposite parties no. 2 to 6 was not in a position to controvert the fact that there were materials against the opposite parties no. 2 to 6 in paragraphs no. 1, 8, 9, 10 and 11 of the case diary.

6. Having regard to the aforesaid, the Court finds that a case for interference has been made out as the order impugned is erroneous, both on facts as well as in law.

7. As has rightly been submitted by learned counsel for the petitioner, the Court at the stage of taking of cognizance cannot weigh the evidence and discard the same. Thus, in the present case, the Chief Judicial Magistrate, Jamui had rightly taken cognizance differing from the final form submitted by the



police as there was sufficient material to do so. However, the revisional Court holding that there is no material against the opposite parties no. 2 to 6 was clearly in error, both on facts as well as in law.

8. For reasons aforesaid, the application is allowed.

9. The order impugned dated 11.12.2017 passed by the 2nd Additional Sessions Judge, Jamui in Cr. Revision No. 43 of 2016, stands set aside. As a consequence, the order taking cognizance dated 18.04.2016, passed by the Chief Judicial Magistrate, Jamui relating to Simultalla P S Case No. 31 of 2015, stands revived.

10. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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