

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4449 of 2017

Arising Out of PS. Case No.-1655 Year-2015 Thana- MADHEPURA COMPALINT CASE
District- Madhepura

=====

Md. Pappu S/o- Md. Moti Residents of Village- Madhepura ward no. -12,
Police Station- Madhepura, District- Madhepura.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Bibi Khudaria @ Khudru W/o- Md. Abid, D/o - late Muso Mian R/o
Village- Sukhasan, P.S.- Singheshwar , District- Madhepura.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Shekhar Kumar Singh, Adv.
For the Opposite Party/s : Dr.Mrityunjaya Kr.Gautam, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 03-05-2019 Heard learned counsel for the petitioner as well as
learned APP.

2. Petitioner is aggrieved by an order dated
27.07.2016 passed by learned Sessions Judge, Madhepura in Cr.
Rev. No.42 of 2016 whereby and whereunder the order dated
30.03.2016 passed by the learned ACJM, IInd, Madhepura
relating to Complaint Case No.1655/2015 dismissing the same
under Section 203 of the Cr.P.C has been set aside.

3. It has been submitted at the end of the learned
counsel for the petitioner that the order impugned is bad in the
background of the fact that the same has been passed contrary to
the spirit of law. To justify such submission, it has been
submitted that conduct of the prosecution would have been seen



by the learned Sessions Judge, more particularly, in the background of the fact that initially Complaint Case No.994(c)/2014 has been filed at the end of O.P. No.2/Complainant after long gap of alleged occurrence, i.e. dated 07.09.2014 and the same was with the purpose having an explanation that on account of delay, no material evidence could be produced however, the police gone through in depth during course of investigation and found the case false whereupon, submitted police report, false. During midst thereof, though the protest petition has been filed which converted as complaint petition but, the activity of the complainant remained same and in the aforesaid background, the improbability in the prosecution case have been properly considered by the learned lower court which, during course of conduction of inquiry under Section 202 of the Cr.P.C, considered and dismissed the same under Section 203 of the Cr.P.C, which the revisional court completely overlooked. Had there been, no order would have been passed in present form. That being so, the order impugned is fit to be set aside.

4. The learned APP opposed the same.

5. Gone through the record. There happens to be some sort of slackness at the end of the petitioner which, dis-



entitles him to seek any relief. From para-1 of the petition along with prayer, it is evident that the order of the revisional court dated 27.07.2016 passed in Cr. Rev. No.42 of 2016 has been under challenged but, from Annexure-5, it is evident that in pursuance thereof, cognizance of an offence against the petitioner had already been taken vide order dated 06.09.2016. The aforesaid order 06.09.2016 has got independent identity and without challenging the same, instant petition could not be considered to be legally maintainable. Accordingly, dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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

