

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49613 of 2014

Arising Out of PS. Case No.-10 Year-2010 Thana- EAST COLONY District- Munger

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Mahesh Mahto Son of Kaleshwar Mahto, Resident of Village - Maharna,
Police Station - Dharhara, District - Munger

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Anirudha Prasad Singh, S/o late Chotelal Singh, Village- Choti Daulatpur,
P.S.- Jamalpur, District- Munger.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan with
Mr. Avinash Kumar, Advocates

For the State : Mr. B. N. Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 13-03-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. Nobody appears on behalf of the opposite party no. 2
despite notice having been received by him personally.

3. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 (hereinafter referred to as
the 'Code') for the following relief:

*“That this quashing petition has been preferred on
behalf of the petitioner with the prayer to quash the
order dated 20.3.2014 passed in Cr. Rev. No. 201/2013
by the learned Sessions Judge, Munger affirming the
order dated 20.7.2013 passed in G.R. Case No.
540/2010 by the learned Judicial Magistrate, 1st Class
Munger, whereby the revision court held that revision*



petition is not maintainable against the order refusing discharge filed by the petitioner under section 239 Cr.P.C. as the same is an interlocutory order is unsustainable and vitiable and fit to be quashed. (SCC 2013 (7) SCC 789). The petitioner further prays to quash the order dated 20.7.2013 passed in G.R. Case No. 540/2010 by the learned Judicial Magistrate 1st Class, whereby the petition filed under section 239 Cr.P.C. for discharge has been dismissed by a cryptic order although there exist no material to proceed against the petitioner in the police report and statement of witnesses.”

4. Learned counsel for the petitioner submitted that he had filed Cr. Revision No. 201 of 2013 before the Sessions Judge, Munger against the order dated 20.07.2013 passed by the Judicial Magistrate, 1st Class, Munger by which his petition under Section 239 of the Code had been rejected. It was submitted that the Revision Application was also dismissed by order dated 20.03.2014 by the Sessions Judge, Munger only on the ground that the order rejecting the petition under Section 239 of the Code was an interlocutory order which should not be interfered exercising revisional jurisdiction under Section 397 (2) of the Code. It was submitted that such contention is totally misconceived.

5. Learned A.P.P. submitted that the Court below has considered the matter. However, he fairly submitted that the Hon'ble Supreme Court in **Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd.**, reported as (2001) 7 Supreme Court



Cases 401, at paragraphs no. 8, 9 and 10, has held that the test for determining whether an order is an interlocutory order or not is to consider that if the contention of the petitioner, who moves the superior Court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory, inspite of the fact that it was passed during the interlocutory stage.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds that the Court below could not have summarily rejected the revision application, for the reason that the order under challenge before it was that of rejection of a petition filed by the petitioner under Section 439 of the Code for discharge. Applying the test in **Bhaskar Industries Ltd.** (supra), it is clear that had the plea for discharge of the petitioner upheld by the Court, the proceeding itself would have been culminated. Thus, the said order cannot be termed as interlocutory and thus, not amenable to exercise of power under Section 397(2) of the Code.

7. In the aforesaid background, the application is allowed. The order impugned dated 20.03.2014 passed in Criminal Revision No. 201 of 2013 is set aside. The matter is remanded to



the Court below for fresh consideration on merits, in accordance
with law.

(Ahsanuddin Amanullah, J)

Anjani/-

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