

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50152 of 2014

Arising Out of C.R. Case No.-219 Year-2012 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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Narayan Sah Son of Late Shree Chandra Sah, resident of Mohalla Imambari,
P.S. Laheriasarai, District Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Shoukat Khalil @ Acharya @ Acharya Shoukat Khalil son of Late Khalil Ahmad, resident of Mohalla Mansukha Nagar, Ekuri, P.O. Laheriasarai, P.S. Bahadurpur, District Darbhanga. Founder Chairman of Mithila Minority Dental College, Laheriasarai, Darbhanga.
3. Ashok Kumar Jha son of Late Ram Nandan Jha resident of Village Kabilpur, P.S. Bahadurpur, District Darbhanga not named in complaint petition.
4. Binod Sah son of Late Parmeshwar Sah resident of Mohalla Imambari, P.S. Laheriasarai, District Darbhanga.
5. Raghunath Pawan son of Late Prayag Pawan.
6. Ramnath Paswan son of Late Mahadeo Paswan Both resident of Village Ekuri, P.S. Bahadurpur, District Darbhanga.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sameer Ranjan, Advocate
For the O.P. Nos. 2-6	:	Mr. Md. Nadim Seraj, Advocate
		Mr. Altamish Advocate
For the State	:	Mrs. Anita Kumari Singh A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 13-03-2019

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

2. 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 the present application is being filed for quashing of order dated 07.08.2014 passed by Ad hoc Additional Sessions Judge, 4th Darbhanga in Cr. Revision No. 582 of 2013 whereby and whereunder he has pleased to set aside the order of the learned Shri V.K. Pandey, J.M., 1st Class, Darbhanga dated 19.07.2013 passed in C.R. No. 219/12 Trial No. 4215/2013 for found prima facie case against five named accused persons after holding inquiry u/s 202 of the Code of Criminal Procedure.”

3. As per the complaint, the accused are said to have come on the land of the petitioner, who is the complainant, and were forcibly erecting boundary wall which he objected and the opposite party no. 2 is said to have taken Rs. 1700/- from the shirt of the complainant and the opposite party no. 3 is said to have torn the shirt worth Rs. 400/-. Upon enquiry and recording the statement of witnesses, the Court by order dated 19.07.2013 took cognizance under Sections 323, 504 and 420 of the Indian Penal Code and directed for issuance of summons against the accused.

4. Being aggrieved, the opposite party no. 2 filed Criminal Revision No. 582 of 2013 in which, by order dated 07.08.2014, the *Ad hoc* Additional Sessions Judge 4th, Darbhanga had set aside the order dated 19.07.2013.

5. Learned counsel for the petitioner submitted that the complaint filed by him and the deposition of witnesses



clearly make out criminal offence against the accused and, thus, the Judicial Magistrate 1st Class, Darbhanga had rightly taken cognizance and issued summons to the accused. It was submitted that though such allegations have been supported by the witnesses but still the Revisional Court has held that there is no corroboration of the case of the prosecution and not a single witness has supported the prosecution version to make out a *prima facie* case. It was submitted that based on such factually erroneous presumption, the revision has been allowed.

6. Learned A.P.P. submitted that the consideration in the order impugned is difficult to sustain.

7. Learned counsel for the opposite parties no. 2 to 6 submitted that no criminal case is made out against the private opposite parties and, thus, the Revisional Court had rightly held that there was no corroboration of the case of the prosecution and not a single witness had given support to the prosecution version to make out a *prima facie* case. However, he submitted that the matter be remanded for fresh consideration after giving full opportunity to the accused to present their case.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that interference by the Revisional Court on the



ground that there was no corroboration of the case of the prosecution and not a single witness had given support to the prosecution version to make out a *prima facie* case, without giving any reasoning or there being any discussion, cannot be sustained. For arriving at such conclusion, there had to be a detailed discussion and reasoning given by the Revisional Court which does not appear to have been done. However, this Court finds that no useful purpose shall be served by remanding the matter to the Revisional Court, for the reason, that the accused have got, by way of statutory right, opportunity to place all their defence before the original court itself at the time of framing of charge and the said Court is obliged to consider all such materials which the accused may produce in their defence.

9. At this stage learned counsel for the private opposite parties submitted that the opposite party no. 2 is more than 82 years old and infirm in health and further, on the alleged date of occurrence he was at Delhi in connection with his treatment and, thus, the Court may grant him some protection so that he does not have to physically appear before the Court.

10. Having considered the matter, the application stands disposed of in the following terms. The order impugned dated 07.08.2014 passed in Criminal Revision No. 582 of 2013



is set aside. However, the matter is not remanded to the Revisional Court and rather the accused shall be at liberty to file an application for their discharge before the Court below at the time of framing of charge. If the same is done, the Court below shall be obliged to consider the plea of the accused, both on facts as well as in law, which may be brought to its notice and then proceed, in accordance with law. As far as the opposite party no. 2 is concerned, taking into consideration the stand taken by learned counsel, it would serve the ends of justice that upon an application filed under Section 205 of the Code, he may be exempted from personal appearance by the Court below and a petition for discharge on his behalf shall be heard on merits, in accordance with law, and a reasoned order passed.

11. It is made clear that this Court has not given any finding on merits and has interfered in the revisional order only for the reason that there has been no discussion, either on facts or in law, and also no reasoning has been given by the Revisional Court while passing the order. Thus, the interference by this Court in the revisional order shall not be taken as an expression of its opinion on merits.

12. Further, the Court below shall be at liberty to independently and objectively consider the matter on its own



merits without being prejudiced by the present order.

(Ahsanuddin Amanullah, J)

Vinita/ Sarvesh

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