

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3003 of 2017

Arising Out of Complaint Case No.-1848 Year-2013 District- Bhojpur

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Luxman Yadav @ Laxaman Yadav son of Late Lautan Yadav Resident of
Village - Lagan Tola, Police Station - Shahpur, District - Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ram Nagad Yadav son of Late Lautan Yadav
3. Suresh Yadav Singh alias Suresh Yadav Son of Ram Nagad Yadav Both
residents of village - Lagan Tola, Police Station - Shahpur, District -
Bhojpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar
Mr. Rahul Nath

For the Opposite Parties: Ms Shyama Sinha

For the State : Mr. Jharkhandi Upadhyaya, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

6 04-07-2019 Heard the learned counsel for the parties.

The petitioner/complainant and Opposite Party
Nos. 2 and 3 are own brothers. During the pendency of the
present petition, Opposite Party No. 2 has died.

Learned counsel for the petitioner is permitted to



delete the name of Opposite Party No. 2 and re-number the Opposite Party No. 3 as Opposite Party No. 2 during the course of the day.

The complaint of the petitioner was sent under Section 156(3) of the Code of Criminal Procedure for institution of a regular case, whereafter Shahpur P. S. Case No. 13 of 2011 dated 05.02.2011 was instituted against the Opposite Party No. 2 and others for offences under Sections 457, 380, 427 and 120 (B) of the Indian Penal Code.

The police after investigation submitted final form false.

The aforesaid report of the police under Section 173 Cr.P.C. was accepted by the court below and the protest petition which was on record was treated as complaint and cognizance was taken against the opposite parties under Section 380 of the Indian Penal Code.

The opposite parties challenged the aforesaid order before the learned Sessions Judge, Bhojpur at Ara vide Cr. Revision No. 48 of 2015. The revisional court vide order



dated 19.09.2016 set aside the order of cognizance on the fallacious plea that if the final report false was accepted by the court below, the protest petition could not have been treated as complaint and cognizance could not have been taken.

The aforesaid order is under challenge.

The learned revisional court has wrongly delineated the position of law. The Magistrate had not committed any mistake in accepting the final report and treating the protest petition as a complaint. Cognizance was taken after an inquiry under Section 202 Cr.P.C. was held.

The revisional order, therefore, is absolutely unsustainable in the eyes of law and is therefore set aside.

With the setting aside of the revisional order, the order of the learned Magistrate taking cognizance under Section 380 of the Indian Penal Code against the accused persons / Opposite Party No. 2 stands revived.

It would be open for the accused persons / Opposite Party No. 2 to challenge the aforesaid order afresh on grounds of facts and that assuming every allegation in



the complaint petition as well as in the deposition of witnesses to be true, no offence under Section 380 of the Indian Penal Code is made out.

The petition stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

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