

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38203 of 2019

Arising Out of PS. Case No.-172 Year-2018 Thana- KHAIRA District- Saran

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1. Ashok Jaiswal @ Ashok Kumar Jaiswal Son of Gautam Jaiswal Resident of Village - Khodaibagh, P.S. - Khaira, District - Saran at Chapra.
 2. Jharilal Rai Son of Late Suraj Rai Resident of Village - Khodaibagh, P.S. - Khaira, District - Saran at Chapra.
 3. Kunal Kumar Rai @ Kunal Kumar Son of Badan Rai Resident of Village - Balampur, P.S. - Khaira, District - Saran at Chapra.
 4. Guddu Kumar Rai @ Guddu Kumar Son of Badan Rai Resident of Village - Balampur, P.S. - Khaira, District - Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kunti Devi, Wife of Late Shree Kishun Mahto, Resident of Village - Khodaibagh, P.S. - Khaira, District - Saran at Chapra.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Krishna Prasad Singh, Sr. Advocate Mr. Shambhu Prasad Yadav, Advocate
For the Opposite Party/s	:	Mr. Amit Kumar Rakesh, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 28-06-2019 The petitioners are aggrieved by the order dated 27.05.2019 passed in Cr. Rev. No. 305 of 2018 by the learned Additional Sessions Judge-II, Saran at Chapra whereby the order dated 06.10.2018 passed by the learned Additional Chief Judicial Magistrate-X, Saran at Chapra in connection with Khaira P.S. Case No. 172 of 2018 whereby cognizance had been taken against the



chargesheeted accused persons has been set aside and the matter has been remitted to the learned A.C.J.M. X, Saran at Chapra to write out a fresh order in accordance with law.

The petitioners and others faced investigation in connection with Khaira P.S. Case No. 172 of 2018 registered for the offences under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act. The police after investigation submitted chargesheet against some of the accused persons whereas the petitioners were not sent up for trial as no complicity of theirs was found during the course of investigation.

The learned A.C.J.M. X, Saran at Chapra vide his order dated 06.10.2018 accepted the final report and took cognizance against only those persons who were chargesheeted/sent up for trial. This order of the learned A.C.J.M. X, Saran at Chapra was challenged by the informant/opposite party no. 2 in revision alleging that the order did not reflect any application of mind and the



learned court below was under an obligation to look into the police papers to find out the accusation against the accused persons and then pass an order in accordance with law and not act as mere rubber stamp of the investigation agency.

The learned revisional court took note of the materials available in the case diary against the petitioners and found that the order of cognizance was lop-sided and without any application of mind. Consequently the order of the learned A.C.J.M. X, Saran at Chapra was set aside and the matter was remitted to him for writing out a fresh order.

Mr. Krishna Prasad Singh, learned senior advocate has submitted that the revisional court committed a grave error and instead of remitting the matter, he ought to have directed the informant to approach the court at the stage of 319 Cr.P.C. if at all any material would have been gathered by way of evidence of witnesses during trial. The approach of the



revisional court was therefore absolutely unjustified.

This Court would have assessed the correctness of the aforesaid submissions but for the fact that the matter has now been remitted to the court of the learned A.C.J.M. X, Saran at Chapra for him to write out a fresh order in accordance with law. If the learned Magistrate gives a re-look at the matter and passes an order it will be to the disadvantage of none as an act of court injures no one. This is the only reason why this Court does not wish to interfere with the order of remand of the case to the court of the learned A.C.J.M. X, Saran at Chapra for writing out a fresh order..

The petition therefore is dismissed.

However it would be open for the petitioners to approach this Court if he is aggrieved by the order of the Magistrate.

(Ashutosh Kumar, J)

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