

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.111 of 2018

Arising Out of PS. Case No.-200 Year-2015 Thana- BIHPUR District- Bhagalpur

Sachcho Baitha S/o Shree Kunkun Baitha, R/o Village- Auliyabad, P.S.-
Bihpur, Post Jhandapur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ajay Singh S/o Dhanuki Singh, R/o Village- Dayalpur, P.S.- Bihpur, Post -
Jhandapur, District- Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rama Nand Poddar with Mr. Rabindra Kumar Chaudhary, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No.2	:	Mr. Ram Sumiran Singh with Mr. Mukesh Kumar, Advocates

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 18-07-2019

Heard learned counsel for the petitioner; learned APP for
the State and learned counsel for the opposite party no. 2.

2. The present application has been filed under Sections
397 and 401 of the Code of Criminal Procedure, 1973 for setting
aside the order dated 9/11-01-2016 passed by the Additional Chief
Judicial Magistrate, Naugchhia in the district of Bhagalpur in
Bihpur PS Case No. 200 of 2015/GR No. 725 of 2015 by which
the Court has accepted the final form.

3. The petitioner was the informant of Bihpur PS Case
No. 200 of 2015, instituted under Sections 406/504/323/420/506 of
the Indian Penal Code, on 29.06.2015. The police, after
investigation, submitted final form by not sending the opposite



party no. 2 for trial on the basis of deficiency of evidence. The Court accepted the final form.

4. Learned counsel for the petitioner submitted that the law requires information to be given by the Court to the informant, if in a police case the accused are not sent up for trial and final form is submitted. It was submitted that in the present case, though from the order sheet of the Court below it appears that notice was issued, but the same was never served on the petitioner and, thus, without ensuring service of notice, the Court going ahead and accepting the final form is bad in the eyes of law.

5. Learned APP, upon going through the Lower Courts Record, fairly submitted that the service of notice on the informant, i.e., the petitioner has not been effected.

6. Learned counsel for the opposite party no. 2 was also not in a position to show to the Court that notice may have been received.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that there has been miscarriage of justice as the mandatory requirement of law for notice to the informant in case the accused are not sent up for trial and the police submits final form, has been breached. From the order impugned also it is clear where the Court



has recorded about only issuance of notice to the informant and not its service.

8. For reasons aforesaid, the application is allowed.

9. The order impugned dated 9/11-01-2016 passed by the Additional Chief Judicial Magistrate, Naugachhia, District Bhagalpur stands set aside. The matter is remanded to the Court below for fresh consideration after hearing the petitioner. The petitioner and the opposite party no. 2 shall appear before the Court below on 5th August, 2019 when a date shall be fixed for hearing on the final form submitted by the police. Thereafter, a detailed order shall be passed, in accordance with law.

10. The Court would only observe that it would be within the right of the petitioner to file a protest, if he so desires.

11. It is made clear that the present order has been passed purely on a legal point and the Court has not expressed any opinion on the merits of the matter.

12. The Lower Courts Record be returned forthwith.

(Ahsanuddin Amanullah, J)

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