

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22498 of 2016

Arising out of PS. Case No.-217 Year-2014 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

Roshan Kumar Yadav, son of Ram Narayan Yadav, resident of Village
Jhajhara, P.S. Kusheshwas Asthan, Distt. - Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Deo Shankar Singh, son of Kedar Narayan Singh, resident of Village Kale,
P.S. Hasanpur, District - Samastipur.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 52489 of 2016

Arising out of PS. Case No.-217 Year-2014 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

1. Hemant Kumar Jha, Son of Late Chandra Shekhar Jha, resident of Village
Sonupur, Police Station - Rosera, District - Samastipur.
2. Nagendra Lal Das, son of Late Sheo Gobind Das, resident of Village -
Olipur, Police Station - Bhaiklsthana, District - Madhubani.
3. Birendra Rawat, son of Late Shivdhar Rawat, Resident of Village - Juaphar,
Police Station - Bhagwanpur, District - Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Deo Shankar Singh, son of Kedar Narayan Singh, resident of village - Kale,
Police Station - Hasanpur, District - Samastipur.

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 22498 of 2016)

For the Petitioner : Mrs. Shama Sinha, Advocate

For the O.P. No. 2 : Mr. Jagarnath Singh, Advocate

Mr. Rakesh Kumar, Advocate

For the O.P. No. 3, 4 & 5: Mr. Rajindra Narain, Sr. Advocate

For the State : Mr. Kr. Virendra Narayan, APP

(In CRIMINAL MISCELLANEOUS No. 52489 of 2016)

For the Petitioners : Mr. Rajindra Narain, Sr. Advocate

Mr. Makardhwaj Upadhyay, Advocate

For the O.P. No. 2 :

For the State : Mr. Rajendra Singh Shastriji, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT



Date : 18-07-2019

Heard learned counsel for the parties.

2. The petitioners along with others were put in the column of accused in Complaint Case No. 217 of 2014. By order dated 23.04.2015, the complaint petition was dismissed by the learned Sub-Divisional Judicial Magistrate, Biraul. The dismissal was challenged by the complainant (opposite party no. 2 herein)- Deo Shankar Singh before the learned Sessions Judge, Benipur in Cr. Revision No. 54 of 2015. By the impugned order dated 08.07.2015, the learned Sessions Judge set aside the order of dismissal of complaint and directed the learned court below to take cognizance for offences prima facie made out. According to the opinion of the learned Sessions Judge offences under Sections 406, 409, 420, 120(B), 467 and 468 of the Indian Penal Code were prima facie there. Thereafter, the learned Sub-Divisional Judicial Magistrate, Biraul took cognizance for the referred offences by the impugned order dated 28.01.2016.

3. Both the orders have been challenged in both the criminal miscellaneous applications aforesaid by different accused persons.

4. The order of the revisional court has been challenged on the ground that the petitioners were not noticed while the



learned Sessions Judge passed the impugned order in the criminal revision aforesaid, whereas it is well settled principle of law that though the accused has no right to participate in the inquiry under Section 202 Cr.P.C. However, once the complaint petition was dismissed, a right accrued in favour of the accused that whenever dismissal is interfered with by any superior court, the accused must have opportunity of hearing. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Manharibahi Muljibhai Kakadia & Anr. vs. Shaileshbai Mohanbhai Patel & Ors.** reported in **2013(2) PLJR (SC) 22.**

5. The order of the revisional court has been challenged on the ground that Section 398 Cr.P.C. empowers the revisional court to direct the Magistrate subordinate to it to make further inquiry into the complaint and in this case, the revisional court sat over the matter as a Magistrate and disclosed its mind as to under which provision cognizance of the offences was to be taken.

6. Submission is that since order of the revisional court is itself bad in law, the subsequent order of cognizance dated 28.01.2016 in pursuance of the revisional courts' order is also not sustainable in law.

7. The complainant opposite party no. 2 appeared in Cr. Misc. No. 22498 of 2016, however, no notice was sent to the



complainant separately in Cr. Misc. No. 52489 of 2016 as this Court by order dated 03.07.2019 passed in Cr. Misc. No. 22498 of 2016 directed listing of Cr. Misc. No. 52489 of 2016 along with the aforesaid criminal miscellaneous for the reason that the same orders were challenged by the accused persons of the same case separately, in the above applications under Section 482 Cr.P.C.

8. Learned counsel for the opposite party no. 2 submits that the accused has no right of hearing, during inquiry, under Section 202 Cr.P.C., and the complaint was dismissed after inquiry. Therefore, there was no opportunity for hearing of the accused before the learned Sessions Judge because no right had accrued to them. Only the complainant was aggrieved by the impugned order. He further submits that the impugned order dated 28.01.2016 was challenged by co-accused Ram Narayan Yadav before the learned Sessions Judge, Darbhanga in Cr. Revision No. 117 of 2016 and the learned Sessions Judge dismissed the criminal revision aforesaid against order of cognizance dated 28.01.2016 passed in the referred Complaint Case No. 217 of 2014.

9. It is evident that the learned Sessions Judge passed order dated 08.07.2015 in Cr. Revision No. 54 of 2015 without notice to the petitioners, who were arrayed as opposite party nos. 2 to 6 in the criminal revision. Sub-section 2 of Section 401 Cr.P.C.



requires that no order under this section shall be made to the prejudice of the accused or other person unless he has, had an opportunity of being heard either personally or by pleader in his own defence. In this case, the order has been passed prejudicial to the accused of the complaint case who are petitioners herein. Hence, they must have been given opportunity of hearing before the revisional court passed the impugned order against them. Therefore, order of the revisional court is not sustainable in law for this reason only.

10. In Manharibahi's case (**supra**), the Hon'ble Supreme Court in para 48, 54 and 58 of the judgment observed as follows:-

"48. The legal position is fairly well-settled that in the proceedings under Section 202 of the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, upto the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs an investigation to be made by a Police Officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds that there is no sufficient ground for proceeding with the



complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. The Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence. Three expressions, “prejudice”, “other person” and “in his own defence” in Section 401(2) are significant for understanding their true scope, ambit and width. Black’s Law Dictionary [Eighth Edition] explains “prejudice” to mean damage or detriment to one’s legal rights or claims. Concise Oxford English Dictionary [Tenth Edition, Revised] defines “prejudice” as under :

“1. Preconceived opinion that is not based on reason or actual experience. > unjust behaviour formed on such a basis. 2. harm or injury that results or may result from some action or judgment. v.1 give rise to prejudice in (someone); make biased. 2. cause harm to (a state of affairs)”.



54. *In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203 – although it is at preliminary stage – nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get right of hearing before revisional court although such order was passed without their participation. The right given to “accused” or “the other person” under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and*



204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.

58. We are in complete agreement with the view expressed by this Court in P. Sundarrajan, Raghu Raj Singh Rousha and A. N. Santhanam. We hold, as it must be, that in a revision petition preferred by complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed crime is entitled to hearing by the revisional court. In other words, where complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of



Section 401(2) of the Code. If the revisional court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled.”

11. In the last paragraph of the impugned order, the learned revisional court has recorded as follows:-

“..... considering all these facts, this court has come to the conclusion that aforesaid act of the accused/O.P. No. 2 to 6 constitutes offence under Sections 406, 409, 420, 120(B), 467 and 468 of the Indian Penal Code and thus the impugned order needs interference and accordingly this criminal revision is allowed”.

12. Section 398 Cr.P.C. reads as follows:-

“398. Power to order inquiry.--- On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any



complaint which has been dismissed under section 203 or sub-section (4) of section 204 or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.”

13. A bare perusal of the aforesaid provision makes it evident that what the revisional court can do in exercise of power under Section 397 Cr.P.C. while interfering with dismissal of complaint is to direct further inquiry into the complaint which was dismissed under Section 203 Cr.P.C. The revisional court cannot disclose its mind as to what offences are made out and prejudice the mind of the Magistrate which he may make up after further inquiry in the complaint matter. For this reason also, the impugned order of the revisional court is not sustainable in law.

14. Since the order of the revisional court is found bad in law causing failure of justice, the subsequent order of cognizance dated 28.01.2016 passed in pursuance of the revisional courts’ order also stands vitiated. Hence, order of the revisional court as well as order of cognizance dated 28.01.2016 stands quashed and the matter is remitted back to the court of learned Sub-Divisional Judicial Magistrate/Judicial Magistrate, Biraul



wherever the case is pending to enter into fresh inquiry and pass fresh order in accordance with law. The learned Magistrate shall give opportunity of hearing to the accused also before passing any order in the complaint case. This Court has not expressed anything on the merit of the allegation/case disclosed in complaint petition. Both of the applications stand allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	A.F.R.
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