

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2759 of 2017

Arising Out of PS. Case No.-1646 Year-2014 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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1. Chandra Kishore Dubey @ Chandra Kishore Chaubey Son of Late Sukdeo Chaubey.
 2. Rajeev Chaubey, Son of Chandra Kishore Chaubey.
 3. Priyanka Kumari, daughter of Chandra Kishore Chaubey.
 4. Priya Chaubey, daughter of Chandra Kishore Chaubey,
 5. Usha Devi, Wife of Chandra Kishore Chaubey all are resident of Mohalla-Belbanwa, Ward No. 22, Behind Custom Office P.S.- Motihari Town, District- East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Manoj Kumar Dubey, Son of Late Narmdeshwar Dubey resident of Mohalla- Srikrishna Nagar, P.S.- Motihari Town, District- East Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vijay Shankar Shrivastava, Adv.
For the Opposite Party/s : Mr. Sakir Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

6 09-04-2019 Petitioners preferred instant petition with a prayer to quash the order dated 28.11.2016 passed in Criminal Revision No.88/2016 by the Sessions Judge, East Champaran at Motihari whereby and whereunder the learned Revisional Court has set aside the order dated 19.04.2016 passed by A.C.J.M., XIth, Motihari whereby and whereunder Complaint Case No.1646 of 2014/0002523 of 2014 has been dismissed for want of filing of requisition along with process fee, in accordance with Section 204(4) of the Cr.P.C.



2. In order to properly appreciate the controversy salient, features as coming out is to be taken note of. Having an allegation of assault as well as taking away a box. Containing ornaments, cash a complaint petition was filed by the O.P. No.2/complainant in accordance with Section 200 of the Cr.P.C. Subsequently thereof, the aforesaid complaint was transferred to the learned lower court as provided under Section 192(2) of the Cr.P.C. for holding an inquiry under Section 202 of the Cr.p.C. and after completing the same, vide order dated 29.02.2016 the learned lower court took cognizance of an offence punishable under Section 323, 341 IPC whereupon directed to summon the petitioners/accused and for that, the complainant /O.P. No.2 was directed to file requisites fixing date 10.03.2016. From the record it also transpires that on 10.03.2016, 20.03.2016/21.03.2016 and then lastly on 19.04.2016 on account of absence of O.P. No.2 whereupon, process fee along with requisites were not filed let dismissal of the complaint.

3. Learned counsel for the petitioners has submitted that the order passed by the learned Magistrate happens to be legal, just and proper whereupon, would not have been set aside by the revisional court. It has also been submitted that accused should not be harassed nor the criminal case should be allowed



to linger without any cogent reason more particularly at the whims of the complainant allowing hanging of sword over the head of the accused. Accordingly, the order passed by the learned revisional court would not stand.

4. The learned APP along with learned counsel for the O.P. No.2 has submitted that the present petition has become infructuous in the background of the fact that revisional court's order dated 28.11.2016 has been challenged on 11.01.2017, after expiry of the fortnight time having been granted thereunder to comply, that means to say the revival of the complaint petition filing of requisites /process fee might have taken place otherwise there was no scope left for any opportunity, furthermore. That means to say, in case there would have been non-compliance of order within the stipulated period there was no scope left furthermore. The petition even being filed consuming the period, did not speak, that means to say, there has been proper compliance in the aforesaid background, the scope of application Section 482 Cr.P.C. is not at all warranted. That being so, instant petition has become infructuous irrespective of the fact that vide order dated 27.08.2018 there has been stay of the portion of the revisional court's order.

5. For proper appreciation of the lis it seems better to



see Section 204 Cr.P.C. which reads as follows:-

“Section 204.

204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons- case, he shall issue his summons for the attendance of the accused, or

(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub- section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub- section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.”

6. After going through the same, it is evident that no time schedule has been prescribed for filing of requisites/process fee. However, it should be within the reasonable time which could be considered in the facts and circumstances of the each case coupled with any kind of explanation causing delay. An explanation has been offered at the end of the O.P. No.2/complainant while preferring Criminal Revision No.88/2016 over non-compliance of the order during the intermediary period. Once, the revisional court has considered the same, accepted the same, acknowledges the same



and further, unless and until the same happens to be perverse or contrary to the spirit of law, exercising the power under Section 482 Cr.P.C. only for its annulment should not be.

7. Furthermore, it is evident from the record that the revisional court's order dated 28.11.2016 has been challenged after expiry of the fortnight and that being so, during the intervening period either the processes would have been deposited after revival of the complaint petition and if not, there was no occasion for revival of the complaint petition, coupled with the fact that there should have been disclosure on that very score.

8. In the aforesaid background, the instant petition sans merit and is accordingly, dismissed. Stay so granted vide order dated 27.08.2018 is hereby vacated.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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