

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.349 of 2018

In

Civil Writ Jurisdiction Case No.20683 of 2013

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1. Most. Phulmatiya Devi, Wife of Late Hira Ram,
 2. Badar Ram Son of Late Charitra Ram Resident of Village - Jagarnatha Bazar, Police Station - Manjhagarh, District - Gopalganj
 3. Ram Prasad @ Ram Prasad Ram, Son of Deo Ram, All Resident of Village - Jagarnatha Bazar, Police Station - Manjhagarh, District - Gopalganj

... .. Appellant/s

Versus

1. The State of Bihar through the Collector of the District - Gopalganj
2. The Sub Divisional Magistrate, Gopalganj
3. The Anchal Adhikari, Manjhagarh, District - Gopalganj
4. The Officer - Incharge, Manjhagarh, District - Gopalganj
5. Dhrub Bhagat Son of Sheo Sagar Bhagat Resident of Village - Jagarnatha Bazar Tola, Police Station - Manjhagarh, District - Gopalganj

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Naresh Prasad, Advocate
For the State	:	Mrs. Nutan Sahay, A.C. to AAG-12
For Respondent No. 5	:	Mr. Javed Aslam, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-01-2019

Re: I.A. No. 2001 of 2018

Heard Shri Naresh Prasad, learned counsel for the appellants, Shri Javed Aslam for the respondent-petitioner Dhrub Bhagat and Smt. Nutan Sahay, learned counsel for the State of Bihar.

2. The appeal is reported to be delayed by 347 days.

3. We have considered the affidavit filed in support of



the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 2001 of 2018 stands allowed accordingly.

Re: I.A. No. 2164 of 2018

The applicant being the widow of Private Respondent No. 5 is granted leave to appeal. I.A. No. 2164 of 2018 stands allowed accordingly.

Re: L.P.A. No. 349 of 2018

This appeal arises out of C.W.J.C. No. 20683 of 2013. From the caption of the writ petition it appears that the petition was filed on the strength of the orders dated 4th February, 2010 and 19th March, 2010 that were orders passed by the competent Magistrate in exercise of the powers under Section 133 of the Criminal Procedure Code. The prayer in effect in the writ petition was for the enforcement of the said orders as has been recorded by the learned Single Judge, yet for reasons best known to the learned counsel for the respondent-petitioner the writ petition was described as a Civil Writ Petition in spite of the fact that the relief was entirely in relation to an



order passed under Section 133 of the Criminal Procedure Code. It is, therefore, was a matter of criminal jurisdiction and not arising out of any other encroachment proceedings under any other law for the time being in force.

2. Consequently, we find that the nature of the jurisdiction exercised by the learned Single Judge was one of criminal jurisdiction even though the writ petition was captioned as a Civil Writ Petition.

3. The entire procedure for enforcement of an order under Section 133 Cr.P.C. is provided for in terms of Section 134 to Section 144 of the Criminal Procedure Code. This procedure, therefore, has to be followed by any Magistrate before proceeding to enforce an order. The appellants contend that before initiating or even concluding the proceedings of Section 133 Cr.P.C. under the order dated 4th February, 2010 the appellants have not been served with any notice and the proceedings were *ex parte*.

4. The second contention is that even the learned Single Judge did not issue any notice and proceeded to issue the direction for compliance of the orders keeping in view the general directions issued by a Division Bench of this Court in the case of **Sanjay Jha Vs. State of Bihar through the Chief**



Secretary & Ors., reported in **2016 (1) PLJR 248**.

5. In our understanding, the directions given by the Division Bench do not in any way call upon the Magistrate not to follow the procedure prescribed under the Criminal Procedure Code and it also does not allow the Magistrate to proceed without putting the concerned person to notice but the fact remains that the learned Single Judge virtually exercised a criminal jurisdiction in a writ petition that was captioned as a Civil Writ Petition. We are, therefore, not inclined to entertain this appeal without prejudice to the rights of the appellants to approach the Magistrate concerned for passing of appropriate orders in accordance with law after giving an opportunity to the appellants.

6. The appeal is consigned to records with the aforesaid observations.

7. A copy of this order shall be brought to the notice of the Stamp Reporting Section to keep watch in future that petitions which essentially arise out of proceedings as indicated above and governed by the provisions of the Criminal Procedure Code should be noted while endorsing the report regarding the nature of the relief and the prayer made.

Re: I.A. No. 2002 of 2018



I.A. No. 2002 of 2018 stands disposed of in terms
of the judgment delivered today.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

AFR/NAFR	
CAV DATE	
Uploading Date	03.01.2019
Transmission Date	

