

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80036 of 2019

Arising Out of PS. Case No.-1498 Year-2005 Thana- PURNIA COMPLAINT CASE District-
Purnia

=====

Aruna Devi W/o Prem Kumar Sah R/o village- Pipra, Ward No. 08, P.S.-
Banmankhi, Distt.- Purnia

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Superintendent of Police, Purnea, Bihar
3. Gautam Kumar S/o Parmeshwar Rajak, S.I. Sahayak Khazanchi Hat P. S.,
S.B.O. Purnea Special Branch Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Pramod Kumar Mallick, Adv.
For the Opposite Party/s : Mr.Harendra Prasad, APP

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 05-12-2019 The present petition has been filed for quashing the order dated 26.04.2019 passed by the learned A.D.J. 3rd, Purnea in Criminal Revision No. 431 of 2013 (arising out of C.A. No. 1498 of 2005) whereby and whereunder the revision petition has been allowed and the order of the learned Chief Judicial Magistrate, Purnea dated 15.03.2013, whereby and whereunder cognizance had been taken against the Opposite Party No. 3 herein under Sections 365 and 342/34 of the Indian Penal Code, has been set aside and the matter has been remanded back to the learned court below for passing orders afresh, after hearing the parties.

2. The learned counsel for the petitioner has submitted



that the impugned order dated 26.04.2019 is illegal and suffers from grave infirmity especially on account of the fact that the revisionist i.e. the Opposite Party No. 3 never bothered to appear and was also not represented by any counsel, nonetheless, the learned 3rd Additional District and Sessions Judge, Purnea, without any basis, has set aside the order dated 15.03.2013 passed by the learned Chief Judicial Magistrate, Purnea and without any rhyme or reason has remanded the matter back to the learned Chief Judicial Magistrate, Purnea for passing orders afresh after giving the parties an opportunity of fresh hearing. It is further submitted that the revisionist i.e. the Opposite Party No.2 is not at all interested in pursuing the case pending before the learned court below.

3. Per contra, the learned APP appearing for the State has submitted that in case the revisionist had not appeared and argued, the learned court below was free to pass orders on merits of the case after going through the case records and the non- appearance of the revisionist is not a bar to passing of orders by the learned court below.

4. I have heard the learned counsel for the parties and perused the materials on records and I find that though there is no infirmity in the impugned order dated 26.04.2019, however,



upon a query being put to the learned counsel for the petitioner herein to the effect that in case the learned Chief Judicial Magistrate, Purnea is directed to independently hear the matter afresh and in case the revisionist does not appear, pass appropriate orders on merits, after hearing the petitioner herein within a stipulated period, whether he has any objection, the learned counsel for the petitioner herein submits that he has got no objection.

5. Having regard to the aforesaid facts and circumstances of the case and considering the aforesaid stand of the learned counsel for the petitioner, the present petition stands disposed of with a direction to the learned Chief Judicial Magistrate, Purnea to consider the issues, factually and legally, afresh and then pass a fresh order on the point of cognizance in the pending complaint case no. 1498 of 2005 within a period of six months from the date of receipt/ production of a copy of this order and in case the revisionist i.e. the opposite party no.3 does not appear before the learned court below, the learned court below would be free to pass *ex parte* order, without hearing the opposite party no. 3 herein, however, in accordance with law. It is needless to state that the impugned order dated 26. 04. 2019 passed by the learned A. D. J. , 3rd, Purnea



in Cr. Revision No. 431 of 2013 shall not prejudice the learned
CJM, Purnea while passing the order afresh as aforesaid.

6. The present petition stands disposed of on the
aforesaid terms.

(Mohit Kumar Shah, J)

Tiwary/-

U		T	
---	--	---	--

