

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.990 of 2015

Arising Out of PS. Case No.-278 Year-2013 Thana- MOTIHARI TOWN District- East
Champaran

1. Dr. Anil Kumar, son of late Harendra Kishore Singh Resident of
Village- Masrakh, P.S.-Mashrakh, Dist.-Saran.

2. Dr. Manoj Kumar Sinha, son of late Harendra Kishore Singh
Resident of Village- Masrakh, P.S.-Mashrakh, Dist.-Saran.

... .. Petitioner

Versus

1. The State Of Bihar

2. Niraj Kumar

3. Dhiraj Kumar Both Sons of Birendra Kumar Singh

4. Nilu Kumari Wife of Niraj Kumar All resident of village - Saraiya,
P.S.-Kotwa, Dist.-Res. East Champaran, At present - resident of
Mohalla-Ambika Nagar, P.S.-Banjariya, Dist.-East Champaran

5. Sanjay Kumar sSon of Birendra Kumar Mohalla - Bailbania, P.S.-
Banjaria, Dist.-East Champaran

6. Vinod Kumar Son of now known, The Deed writer Motihari registrar
Office, at Motihari, P.S.-Motihari Town Dist.-Champaran

7. Anil Kumar Son of not known Resident of Village- Sugaon, P.S.-
Sugouli, Dist.-East Champaran License No. 94-04, Motihari Registry
Office, Motihari.

8. Deepu Kumar Shrivastava Son of Parmanand Prasad, P.S. Pipra Kothi,
Dist.-East Champaran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Bindhyachal Singh, Advocate Mr. Satya Prakash, Advocate
For the O.P. No.2	:	Mr. Karandeep Kumar, Advocate
For the State	:	Mr.T.N.Thakur, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 04-02-2020 This Revision Application has been preferred

against the order dated 24.07.2015 passed by learned

C.J.M. in Motihari Town P.S. Case No. 278 of 2013 dated



06.07.2013 Gr. No. 3226/13 lodged under Sections 120(b), 420, 423, 467, 468 & 471 of the Indian Penal Code.

Learned counsel for the original petitioner has filed a substitution petition being I.A. No. 01/2020 stating therein that the sole petitioner of this case died during pendency of this application leaving behind him two sons whose name have been disclosed in paragraph '4' of the application. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Shri Balasaheb K. Thackeray Vs. Shri Venkat @ Babru** reported in **2006(3) PLJR 321(SC) = (2006) 5 SCC 530**. It is submitted that taking into consideration section 302 of the Code of Criminal Procedure the Hon'ble Apex Court has held that "*The Magistrate is empowered to permit prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person other than the Advocate General or the Government Advocate or a Public Prosecutor or Assistant Public Prosecutor shall be entitled to do so without such permission.*"

Thereafter in paragraph '7' of the said judgment



the Hon'ble Apex Court recorded as under:

"7. Above being the position, if any permission is sought for by the legal heirs of the deceased complainant to continue prosecution, the same shall be considered in its perspective by the Court dealing with the matter. It is brought to the notice that by order dated 13.10.2003 further proceedings before the Magistrate are stayed. In that background, Mr. Adsure submitted that the application shall be filed before the Court. if and when any application is filed the same shall be dealt with appropriately. Ordered accordingly."

It is submitted that in the present case the legal heirs of the petitioner are willing to carry on the case and for that reason they are seeking their substitution in the present case.

Learned counsel representing the opposite party no. 2 has no objection to the substitution of the applicants. Other opposite parties being O.P. Nos. 3 to 8 have been though served but they have not chosen to appear before this Court.

In the given facts and circumstances of the case, I.A. No. 01 of 2020 is allowed.

With consent of the parties the matter has been heard on merit.



Learned counsel for the petitioners has assailed the impugned order dated 24.07.2015 passed by learned C.J.M. Motihari on the ground *inter alia* that in no case the learned C.J.M. could have rejected the protest petition filed by the informant of the case without registering the same as a complaint case and enquiring into the matter in accordance with the procedures laid down under the Code of Criminal Procedure in respect of a complaint case. It is his submission that the law is well settled on the subject that in case a protest petition is filed by the informant the same has to be registered in a complaint case and that will proceed in accordance with law.

Learned counsel for the opposite party no. 2 has though initially tried to take this court into the merit of the case but having well appreciated that at this stage this Court cannot go into the merit of the case and there being an order of learned C.J.M. which has been passed without registering the protest petition as a complaint case it cannot be saved with the help of the judicial pronouncements, learned counsel for the opposite party no. 2 accepts the legal



position that the protest petition was required to be registered as a complaint case.

In the aforesaid view of the matter, the order dated 24.07.2015 to the extent the learned C.J.M., Motihari has rejected the protest petition while accepting the final report is hereby set-aside.

The protest petition shall be registered as a complaint case and then the procedures laid down under the Code of Criminal Procedure in relation to a complaint case will be followed by the learned court below.

The substituted petitioners will be at liberty to file an appropriate application in the court below for substitution of their names and on filing of the same the court below shall consider the same and shall pass an appropriate order.

This Revision Application is, thus, allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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