IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23086 of 2019
Arising Out of PS. Case No.-822 Year-2015 Thana- PURNIA COMPLAINT CASE District-Purnia

Sanjeev Ranjan Son Of Shyam Nandan Prasad R/O - East Boring Canal Road, Kamta Path, Police Station - Budha Colony, District - Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Ratan Prasad Wife of Sri Dashrath Prasad Resident of Ratan Vila, Polytechnic Ram Nagar, Police Station- K.Hat, District - Purnea.

... ... Opposite Party/s

Appearance :
For the Petitioner/s : Mr. Sanjeev Ranjan, Adv.
For the Opposite Party/s : Mr. Satya Nand Shukla, APP

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 24-08-2022

This quashing application has been filed for quashing of the order dated 04.12.2015 passed by the learned Sessions Judge, Purnea in Cr. Revision No. 192 of 2015 by which he had set aside the order dismissing the complaint at pre-summoning stage for non-prosecution and consequential order dated 24.08.2016 passed in Complaint Case No. 822 of 2015 by the learned Chief Judicial Magistrate, Purnea, whereby the learned court below has taken cognizance for offence under Section 466, 468, 471 read with 120(B) of the Indian Penal Code and issued summons for appearance of the petitioner and other accused persons.

2. The facts of the case, in brief, is that a complaint was filed on 01.03.2015 in the Court of Learned Chief Judicial Magistrate, Purnea by the complainant Ratan Prasad claiming herself to be an educated lady for an incident said to have been committed on 19.12.2008, wherein she has alleged that accused

no. 1 is a practicing lawyer of Patna High Court and accused Nos. 2, 3, and 4 were partners of Chitrawani Cinema and in the partnership firm they were running the cinema hall at Bhatta Bazar in the name and style of Purnea Takies. It is alleged in the complaint that the partners of Purnea Talkies had availed loan facility from Gulabbagh Branch of State Bank of India and defaulted in making repayment of the loan amount and consequently some of the properties of Cinema Hall was sold by the Debts Recovery Tribunal, Patna in the year 2002 by public auction and the complainant had purchased a piece of land in the said auction. The complainant was handed over delivery of possession in February, 2008, pursuant to order passed by this Court. The sale certificate and confirmation of sale were enclosed as Annexure-1 and 2. It is further alleged in the complaint that after delivery of possession, accused no. 2 to 4 entered into a criminal conspiracy with others to cause harm to the complainant and started to prepare forge document and spread incorrect rumor. In the meantime, accused nos. 2 to 4 filed an appeal before the Debts Recovery Tribunal, Patna, which was registered as Appeal No. 05 of 2008. It is further alleged that the accused nos. 2 to 4 entered into a conspiracy with accused no. 1 for fulfillment of their improper motive, prepared a forged order dated 19.12.2008 in the name of the Debts Recovery Tribunal, Patna and accused no. 1 got the said forged order communicated through registered post vide his letter dated 03.01.2019. The forged order dated 19.12.2008, letter dated 03.01.2009 and registered envelope were enclosed as Annexures-3, 4 and 5. The accused persons by sending forged order and letter made the complainant brief that the Debts Recovery Tribunal, Patna had passed order dated 19.12.2008 in Appeal No. 05 of 2008 against the complainant and others granting status quo till the next date of hearing. The said order does not contain the seal of Debts Recovery Tribunal, Patna or any evidence regarding its authentication, nor the order contained any direction for service of said order to the complainant except that it contains the so called signature of Shri S.K. Sharma, Presiding Officer, Debts Recovery Tribunal, Patna, which is reflected in the order. The complainant, being apprehensive that the order was a forged one, obtained the entire order-sheet of the Appeal No. 05 of 2008, but there was no order conformable to order dated 19.12.2008, and therefore, the order could not be made available to the complainant, but the complainant learnt that a different order dated 19.12.2008 was passed in the said appeal wherein first page of the application giving details of the respondents are to be made available to the counsel for the Bank. The said order is enclosed as

Annexrure-8 in the complaint. It is alleged that the Complainant had sent a legal notice dated 07.05.2014 through his counsel to accused no. 1, but even after receipt of notice, the accused knowingly did not send any reply. The complainant also tried to take information in this context from Presiding Officer but was not successful. Counsel for the complainant inspected the record dated 16.01.2015 and confirmed that the said order contained in Annexure-3 to be forged as no such order dated 19.12.2008 was available in the record of Appeal no. 05 of 2008 nor any application was filed for sending the record to Calcutta. Thus, it is apparent that accused no. 1 along with other accused entered into a criminal conspiracy thereto and prepared a forged order and projected the same as passed by Debts Recovery Tribunal, Patna and got the same served to the complainant, which was an act of forgery causing torture and injury to the complainant.

3. Learned counsel for the petitioner submits that the address of three of accused cited in the complaint shows that they were residing at a place beyond the territorial limit of the district in which the Learned Magistrate was exercising jurisdiction except accused no. 1, whose address was incorrectly shown to be residing at Purnea as the address in the legal notice clearly shows the address of Patna.

4. From perusal of the record, it further transpired that the complaint, was dismissed on 14.09.2015 for non-prosecution at a pre-summoning stage and aggrieved by the said order dated 14.09.2015, the complainant preferred Criminal Revision No. 192 of 2015, which was allowed ex-parte by order dated 17.03.2016 without notice to the accused, who were arrayed as a respondent.

5. After complaint was restored to its original file, the complainant was examined on solemn affirmation on 08.06.2016 and the learned Chief Judicial Magistrate in course of enquiry under Section 202 of the Code of Criminal Procedure directed the complainant to produce other 3 witnesses cited in the complaint in support of her case and the case was posted for 10.08.2016 for examination of other witnesses. However, on 10.08.2016, an application was filed on behalf of the complainant that she does not wish to examine any witness and sought closure of examination of enquiry witness without examining any of them and on the same day in undue haste, the learned Chief Judicial magistrate heard the counsel for the complainant on the point of cognizance and reserved order by fixing the case for passing order on 24.08.2016.

6. On 24.08.2016, the learned Chief Judicial Magistrate after perusing the complaint and going through the statement of

complainant on solemn affirmation and documents submitted by the complainant came to the conclusion that prima facie offence under Section 466, 468, 471, 120(B) of the Indian Penal Code is made out and, accordingly, directed for issuance of summon for the appearance of the accused persons.

7. Learned counsel for the petitioner submits that the learned Magistrate has committed a manifest error in taking cognizance as the alleged incident of forgery is alleged to be in respect of order dated 19.12.2008 and the said order was duly communicated to the complainant vide letter dated 03.01.2009 and after her Auction Sale having being set aside on 01.04.2014 in Appeal No. 05 of 2008 by the Debts Recovery Tribunal, Patna in which there is clear reference in paragraph no.8 that the complainant and other auction purchaser had made construction in violation of the interim order of status quo dated 19.12.2008 and 13.02.2008 and therefore there is an unexplained inordinate delay of approximately six years in lodging the complaint on 01.03.2015 which is not a bona fide prosecution and amounts to an abuse of the process of Court. It is further argued by the counsel for the petitioner that since the delay in lodging the complaint is deliberate, the same is fatal without there being any explanation in the complaint. It is further submitted on behalf of the petitioner

that the complainant has suppressed material fact that her confirmation of sale and sale certificate on which she was relying were set aside vide order dated 01.04.2014 passed by learned Presiding Officer in Appeal No. 05 of 2008 by Debts Recovery Tribunal, Patna and the complainant has thereafter initiated the present criminal proceeding just to harass the accused persons with mala fide intention or ulterior motive of wreaking vengeance on the accused persons and to draw the other party in a long and arduous proceeding which is nothing but amounts to an abuse of the process of the Court. It was further argued on behalf of the petitioner that the complainant has suppressed another vital fact that the complainant along with other auction purchasers had challenged the order dated 19.12.2008 by which status quo was granted and two orders dated 13.02.2009 passed by Debts Recovery Tribunal, Patna by which limitation was condoned an status quo was again granted respectively, before this Court by preferring writ petition bearing C.W.J.C. No. 5297 of 2009 and had leveled serious allegations against Mr. S.K. Sharma, the then Presiding Offier, Debts Recovery Tribunal, Patna which would be apparent from the order dated 24.04.2009 passed in CWJC No. 5297 of 2009 by the learned Single Judge, whereby it was held that the presiding office has ignored the subsequent event of delivery of possession granted by this Hon'ble Court and dismissal of earlier writ petition challenging proclamation of sale which led this Hon'ble Court to observe that the conduct of the Presiding Officer may become an issue in the said matter while staying further proceeding before the Debts Recovery Tribunal, Patna and issuing notice to the respondents. The Presiding Officer, DRT, Patna was arrayed as respondent nos. 1 and 2 and the said order was produced before the debts Recovery Tribunal, Patna by the counsel for the complainant, whereby the Tribunal stayed further proceeding in the said matter, but the Presiding Officer, Shri S.K. Shama, who was holding additional charge, never reported that the said order dated 19.12.2008 was forged, which clearly shows that the complainant after her auction sale was set aside was trying to implicate the accused persons in a false case. It was further argued that the said writ petition was disposed of by order dated 26.08.2013 and the writ court did not interfere with the order dated 19.12.2008 by which status quo was granted despite there being a specific challenge to the said order but disposed off the writ petition by remanding the matter back to the Debts Recovery Tribunal, Patna to hear the parties afresh on the question of limitation and the complainant on remand appeared before the Debts Recovery Tribunal, Patna and hotly contested the case, but did not raise the issue regarding the order dated 19.12.2008 passed by the Tribunal to be forged either before this Court or before the Tribunal rather it accepted the passing of the said order by the Tribunal and therefore, the belated laying of complaint after setting aside of auction sale clearly shows that her lodging of complaint is a malicious prosecution. It was further argued on behalf of the petitioner that a bare perusal of the final order dated 01.04.2014 in Appeal No. 5 of 2008 passed by DRT, Patna by which auction sale made in favour of complainant and others were set aside as nullity, the Tribunal has in paragraph no. 8 had recorded the finding of fact regarding grant of status quo had granted status quo on 19.12.2008 and again on 13.02.2009 and the complainant and others as auction purchasers had violated the injunction order as reported by the Advocate Commissioner appointed by this Tribunal, and therefore, the lodging of complaint after the Appeal No. 5/2008 was allowed setting aside her auction sale is actuated with ulterior motive and is a malicious prosecution to embroil a lawyer in a false case. The complainant has never filed any petition before the DRT, Patna alleging that the order dated 19.12.2008 is forged even after passing of the final order dated 01.04.2014 despite there being specific reference to order dated 19.12.2008 and only makes an unsubstantiated allegation in the complaint that the complainant received no response from the Tribunal. It is further argued on behalf of the petitioner that the complainant has tried to take advantage of the order passed by the Registrar, DRT, Patna on 19.12.2008 to contend that a different order was passed on that day but failed to disclose the material fact in the complaint that since the Tribunal was vacant, the additional charge of DRT, Patna was assigned to the DRT-II, and Shri S.K. Sharma as P.O., DRT-II, Kolkatta holding additional charge of DRT, Patna has heard the urgent mentioning for interim protection at Kolkatta and had himself noticed in the order dated 19.12.2008 that the case was fixed at DRT, Patna but since there is no bench available at Patna and, therefore, had heard the matter at Kolkatta and passed orders and, therefore, transmission of records of Appeal No. 5/2008 could not be a ground to doubt the correctness of the order. It was further argued that the complainant had drafted the complaint cleverly and cunningly whereby she acknowledged the signature of Shri S.K. Sharma on the order dated 19.12.2008 in paragraph no. 6 of the complaint and does not dispute its correctness, which demolishes the entire case of the complainant regarding preparing of forged order dated 19.12.2008. The complainant tries to cast doubt regarding the veracity of the order dated 19.12.2008 on the premise that the order does not contain the seal of DRT, Patna as the seal of DRT, Patna could not be used when the order was passed at DRT-II, Kolkatta by Presiding Officer holding additional charge of Patna and there was clear direction on the accused nos. 2 and 4 to communicate the order dated 19.12.2008 to the auction purchaser. It was further argued that there was no sufficient material before the CJM, Purnea to take cognizance for the offences as alleged in the complaint except the solitary oral statement of complainant that she received a forged order which came to her knowledge based on inspection report of lawyer Anup Kumar Sharan which statement was unsupported by other auction purchaser who refused to be examined in course of enquiry and the lawyer who submitted a false inspection report did not come forward to be examined to support his inspection report despite cited as witness in the complaint as EW-3 as the said order was clearly available on record in Appeal no. 5/2008 and thus there was no material before the learned Magistrate to come to the conclusion regarding the prima facie case being made out. Further, in absence of the main contestant the State Bank of India, and other four auction purchasers coming forward to support the allegation that the order dated 19.12.2008 was a forged document, and therefore, the learned Magistrate ought to have been circumvented in taking cognizance. The pleader notice sent earlier and also enclosed by the complainant did not contain the signature of the lawyer sending the notice to ascertain its correctness and therefore, no reply was sent to the unsigned notice.

8. Further, it was argued that the learned Magistrate without following the procedure as laid down under Section 202 of the Cr.P.C. which makes it mandatory with effect from 23.06.2006 to conduct an enquiry under Section 202 of the Cr.P.C. before issuance of process in case where the accused resides beyond the area of jurisdiction of the Court as laid down in (2014) 14 SCC 638 (Vijay Dhanuka & Ors. Vs. Najima Mumtaz & Ors.), (2019) 16 SCC 610 (Birla Corporation Ltd. Vs. Adhentz Investment and Holding Limited & Ors.) and (2017) 3 SCC 528 as it is mandatory for the Magistrate to postpone the issuance of process in each and every case and to conduct inquiry before accused could be summoned as the said requirement is mandatory and not conducting the enquiry under Section 202 of the Cr.P.C. would vitiate the issuance of process.

9. It was further submitted by counsel for the petitioner that the learned Magistrate had no jurisdiction to take cognizance on private complaint in view of the bar created under Section 195(1)(b)(ii) Cr.P.C. as the offence complained of has a direct

impact on proceeding before the Tribunal and was used by the complainant to assail the same in the writ proceeding and therefore, it is only the Tribunal, who is entitled to raise grievance in relation to order passed by it and alleged to be forged by filing a complaint under Section 340 of the Cr.P.C.

10. Lastly, it was submitted relying on 2012 volume 10 SCC 517 (Manharibhai Muljibhai Kakadia vs. Shaileshbahi Mohanlal Patel) that failure to issue notice and opportunity of hearing to the accused persons although arrayed as party in revision petition no. 192/2015 filed by the complainant against the dismissal of complaint under Section 203 of the Cr.P.C. for non-prosecution renders the order dated 04.12.2015 passed by learned Sessions Judge, Purnia as illegal and unsustainable as effect of dismissal of complaint result in termination of complaint proceeding and in-view of Section 401(2) of the Cr.P.C., the suspects get a right of hearing and thus the revisional order passed ex-parte and behind their back is liable to be quashed.

11. The complainant-opposite party has entered appearance and filed counter affidavit but none has appeared on her behalf to oppose this application.

12. Heard the parties and perused the entire materials available on record and from the facts which are on record, there is

no dispute that the complainant along-with four others have purchased the different segment of the property divided in lots of M/S Purnia Takies Company in a public auction held on 19.03.2022 by the Recovery Officer, DRT, Patna for realization of debt determined by the Tribunal due and payable to the State Bank of India at whose instance, the properties were put on auction sale. The complainant and four other auction purchasers had preferred writ petition no.16594/2008 for a direction to the concerned respondents i.e. District Administration to deliver possession to them as per certificate and the writ petition was disposed of vide order dated 27.09.2007 with a direction to the District Administration to ensure that the possession of property is given to auction purchaser in accordance with the order or Tribunal within one month pursuant to which the possession was delivered by District Administration in February 2008 in pursuance of the order passed in contempt petition. The borrowers namely accused no 2 to 4 preferred Appeal no. 5/2008 before the Debts Recovery Tribunal, Patna on 26.11.2008 under Section 30 of the RDDB Act challenging the order dated 19.03.2002 by which properties of the borrower were put on auction sale, confirmation of sale and sale certificate dated 01.07.2002 and order dated 27.02.2003 issued by him as nullity and vitiated by fraud and was represented by their counsel accused no. 1, the petitioner herein and the Registrar issued notice fixing the next dated of the case on 19.12.2008. The Tribunal at Patna being vacant and non-functional, the DRT-II, Kolkatta was given the additional charge of DRT, Patna by the Ministry of Financial Services in exercise of power conferred under Section 4(2) of the RDDB Act and Shri S.K. Sharma, the presiding officer of DRT-II, Kolkatta was holding additional charge of Patna. The Borrower moved the DRT-II, Kolkatta for urgent hearing for grant of status quo after due notice to respondent bank on 19.12.2008 and Mr. S.K. Sharma heard the urgent mentioning by stating in his order dated 19.12.2008 that the case fixed today at DRT, Patna but since there is no bench today at DRT, Patna and seeing the urgency that the auction purchaser were trying to dispose of the property and construction being carried out in some segment passed the order of status quo till the next date of hearing and fixed and next date of hearing of the case on 22.01.2009. The order itself state that a copy of the order is given to the appellant and the appellant shall serve a copy to the respondents. Since the records were at Patna, the case at DRT, Patna was also taken by him and the Registrar on 19.12.2008, as earlier fixed by him, directed the case to be listed on 07.01.2009 and appellants were directed to provide a copy of the first page of the plaint containing the name of the respondents. The Registrar, DRT, Patna on 07.01.2009 directed the case to be listed on 21.01.2009 passed the following orders- "*Place this case before the Hon'ble Bench on 22.01.2009 as dated fixed by the Hon'ble Benc for hearing*". Thus, the passing of order dated 19.12.2008 in Appeal no. 5/2008 by Shri S.K. Sharma, Presiding Officer fixing the next date of hearing of the case on 22.01.2009 is clearly borne out from contemporaneous records. Thus, the allegation made in the complaint by the complainant that a different order was passed on 19.12.2008 by the Registrar for supplying first page of the plaint and no such order conformable to the order dated 19.12.2008 passed by the Presiding Officer, DRT is available on records is nothing but falsehood.

13. Further, the complainant and three other auction purchasers had challenged the said order dated 19.12.2008, by which status quo was granted and two separate orders dated 13.02.2009 passed by the Tribunal condoning limitation and granting status quo respectively by preferring writ petition before this Court vide CWJC No. 5297/2009 in which the Presiding Officer was arrayed as respondent no. 2 and allegation were made against the Presiding Officer of passing order in defiance of the order dated 27.09.2007 passed in CWJC No. 16594/2004, as

delivery of possession having being effected pursuant to orders passed by this Court and granting status quo even though order under challenge were passed some five years back and records of the case was at Patna and not at Kolkatta and this Court vide order dated 24.04.2009, while staying further proceedings before the Tribunal held as follows- "*The conduct of the Presiding Officer of the DRT may become an issue in the matter on full facts being brought on record*".

14. However, the writ petition bearing CWJC No. 5297/2009 was disposed of vide order dated 26.08.2013 and this Court quashed only the order dated 13.02.2008 passed by the Tribunal condoning the delay on the ground of improper service of notice and did not interfere with the order dated 19.12.2008 and order dated 13.02.2009 passed in Appeal no. 5/2008, by which status quo was granted which order remained intact and attained finality. On remand, the Tribunal heard the parties on limitation and merits of the case and vide order and judgment dated 01.04.2014 passed in Appeal no. 5/2008, condoned the delay on ground of fraud in conducting sale and set aside the auction sale as nullity as no right, title and interest passed to auction purchaser under the certificate dated 01.07.2002 as there was flagrant violation of rule 57 and 58 of the second schedule of Income Tax

Act. The Tribunal in paragraph no. 8 of the order dated 01.04.2014 passed in appeal no. 5/2008 clearly mentioned that despite grant of status quo on 19.12.2008 and 13.02.2009, the auction purchaser continued to make construction necessitating the Tribunal to appoint an advocate commissioner vide order dated 31.03.2009 to file its report to indicate whether any new construction was going on in the said property and from perusal of report and photographs enclosed therewith clearly shows that construction at the site continued despite status quo order and, therefore, reduced the amount of compensation which the auction purchasers were liable to receive for making construction. Thus, despite their being specific reference to the order dated 19.12.2008, granting status quo and finding that the complainant and other auction purchasers have violated the status quo order in the final judgment dated 01.04.2014 in appeal no. 5/2008, the complainant never filed any petition to recall the said finding on the ground that no such order conformable to order dated 19.12.2008 exist nor the complainant filed any petition before this Court for vacating the order dated 19.12.2008 earlier assailed by them in CWJC No. 5297/2008 as there was no such order exists in the records and is an act of forgery. Thus, the act of lodging the complaint after six years of passing of the order when the complainant has been unsuccessful in getting the said order set side in duly constituted proceeding and after setting aside of the auction sale made in her favour in 2014 and further, none of the other three auction purchasers or State Bank of India a party respondent in appeal has alleged that the order dated 19.12.2008 to be forged one clearly shows that the proceeding is maliciously instituted with ulterior motive for wreaking vengeance on the accused persons to spite them due to personal grudge as held in AIR 1992 SC 604.

15. Further, there is an unexplained inordinate delay of six years in filing the complaint and there is no explanation as to why she waited till the decision in Appeal no. 5/2008 setting aside her auction sale and under such circumstances, it is difficult to believe that the complainant was not aware of the order when she had challenged the same in 2009 by filing writ petition and contesting the case before DRT, Patna, the delay in absence of any explanation is fatal as it is a case of frustrated litigant, who failed to succeed had initiated criminal proceeding just to harass the other side and their lawyer and the learned Magistrate has allowed such frustrated litigant to give vent to their frustration by cheaply invoking the jurisdiction of the criminal court to harass the accused person which proceeding if permitted to be allowed would degenerate into a weapon of harassment and persecution and

amounts to abuse of the process of law and tool to exert pressure on the accused as held in case of Kishan Singh (D) vs. Gurupal Singh reported in 2010 volume 8 SCC 775.

16. It is further to be noticed that there was no sufficient material to support the allegation of forgery except the oral statement of the complainant as the rest of three witnesses cited in the complaint were not examined by the complainant including EW-3, the advocate, who submitted the inspection report to the complainant to state that no such order exists in the record and presumably to save himself from prosecution for giving false statement in a judicial proceeding and thus in absence of examination of lawyer, who issued the inspection report addressed to her which he as advocate was not entitled under law to issue such report as it is the Tribunal alone who was competent to make report regarding existence or non-existence of such order passed by it and the complainant never brought on record any requisition filed by her for obtaining certified copy and report of the Tribunal to indicate otherwise and therefore, in absence of any factual material in support of allegation i.e. official document issued by the Tribunal to indicate forgery, no offence of any kind as alleged in the complaint is made out and the order impugned is fit to be quashed.

17. Furthermore, since as per the complaint, three of accused persons were residing in different district outside the territorial jurisdiction of Court, the learned Magistrate could not have dispensed with the examination of enquiry witness under Section 202 of the Cr.P.C. which was obligatory and taking of cognizance without examination of any enquiry witness which by virtue of amendment made in 2006 to Section 202 of the Cr.P.C. was obligatory as held in Bajaj Corporation Ltd. (supra), the order taking cognizance is illegal and unsustainable.

18. The conduct of the complainant is suppressing material fact assailing the order dated 19.12.2008 in CWJC No. 5297/2009 before this court in duly constituted proceeding where she was unsuccessful and her sale certificate being set aside vide order dated 01.04.2014 passed in appeal no. 5/2008 by DRT, Patna which contained finding that the complainant has violated the injunction order dated 19.12.2008 alleged by complainant to be forged and refusal to disclose the fact that Appeal filed by borrower were allowed clearly shows that the complainant has not filed the complaint with clean hands and had suppressed material fact which were well within her knowledge and thus had polluted the stream of justice and allowing continuance of such criminal proceeding would be an abuse of the process of Court.

19. The lodging of private complaint in respect of an allegation regarding preparing of a forged order of Tribunal which would come within the definition of Court was clearly barred in view of Section 195(1)(b)(ii) Cr.P.C. as it had direct co-relation with the proceeding to the Tribunal and since the Tribunal itself has relied upon the said order in the final judgment dated 01.04.2014 and the complainant had challenged the said order dated 19.12.2008 in CWJC no. 5297/2009 unsuccessfully and therefore it had been produced before the Court and impacted the formation of Court opinion, therefore, it is Tribunal alone which is cloth with the power to complain as regard the commission of offence by a party to the proceeding as it has close nexus with the proceeding of the Court so that the Court can consider by reference to the records the expediency of prosecuting the delinquent party. The observation of the Supreme Court in Patel Lalji Bhai case reported in AIR 1971 SC 1935 and affirmed in Sachidanand Singh reported in 1998 (2) SCC 493 that the provision of Section 195(1)(b)(ii) is intended to bar the right to initiate criminal prosecution only where the offence is committed has reasonable nexus with the Court proceeding such that the Court can independently determine the need for inquiry into the offence with reference to its own record squarely applies to the

facts of the case and learned Magistrate thus erred in proceeding with the complaint.

20. The order of the revisional Court dated 04.12.2015 is vitiated and unsustainable as no adverse order could have been passed by the learned Session Judge without affording opportunity of hearing to the accused arrayed as respondents even though the complaint was dismissed at pre-summoning stage for want of prosecution as it result in termination of proceeding and in view of plain requirement of Section 401(2) of the Cr.P.C. as held in Manharibhai Muljibhai Kakadia (supra), the requirement of notice and affording hearing is mandatory and since no notice was issued or served by the revisional Court on the accused and the order passed is ex-parte, the same is liable to be quashed.

21. In the facts and circumstances stated above, the Revisional order dated 04.12.2015 and the entire criminal proceeding including the order dated 24.08.2016 passed in complaint case no. 822/2015 by learned Chief Judicial Magistrate, Purnea is hereby quashed and this application stands allowed.

(Anjani Kumar Sharan, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	28.07.2022
Uploading Date	25.08.2022
Transmission Date	25.08.2022