

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL REVISION No.1023 of 2018**

Arising Out of PS. Case No.-1616 Year-2017 Thana- COMPLAINT CASE District- Jamui

1. Gautam Kumar, S/o Late Budhinath Singh, Resident of Mahisodhi, K.K.M. College Road, In front of Registry Court, P.S. Jamui, District - Jamui.
2. Chikku @ Chikku Kumar, S/o Late Budhinath Singh, Resident of Mahisodhi, K.K.M. College Road, In front of Registry Court, P.S. Jamui, District - Jamui.
3. Mala Devi, W/o Late Budhinath Singh, Resident of Mahisodhi, K.K.M. College Road, In front of Registry Court, P.S. Jamui, District - Jamui.

... .. Petitioners

Versus

1. The State of Bihar.
2. Bipin Kumar Singh, S/o Janardan Singh, Resident of Village - Bishanpur, P.O. - Karma, P.S. Sikandra, District - Jamui.

... .. Opposite parties

Appearance :

For the Petitioners	:	Mr. Prabhat Ranjan Singh, Advocate.
For the State	:	Mr. Akhileshwar Dayal, APP
For the O.P. No. 2	:	Mr. Rajesh Kumar Sinha, Advocate.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

Date : 26-08-2022

Heard Mr. Prabhat Ranjan Singh, learned counsel for the petitioners and Mr. Rajesh Kumar Sinha, learned counsel for the opposite party no. 2 and Mr. Akhileshwar Dayal, learned A.P.P. for the State.

Petitioners, in this case, are aggrieved by and dissatisfied with the order dated 23.06.2018 passed in Cr. Rev. No. 10/2018 by learned 1st Additional District & Sessions Judge, Jamui wherby and whereunder he has been pleased to set-aside the order taking cognizance and issuance of summons passed by learned Judicial Magistrate, 1st Class, Jamui in Complaint Case No. 1616C/2017, further



held that a prima-facie case u/s 406, 420, 120B, 323, 217, 504/34 of the Indian Penal Code and Section 138 of N.I. Act is made out against all the four persons/accused named in the complaint petition and accordingly directed the learned Judicial Magistrate, 1st Class, Jamui to pass a fresh order in accordance with law in the light of the facts stated in the order of learned A.D.J.-I, Jamui.

The brief facts of the case are as under:- (1) The Complainant – opposite party no. 2 filed the aforesaid complaint case in the court of learned Chief Judicial Magistrate, Jamui. The same was transferred under Section 192(1) Cr.P.C. to the court of learned Judicial Magistrate, 1st Class where the complainant examined himself and altogether four witnesses deposed in course of inquiry under Section 202 Cr.P.C.

After perusal of the materials on the record, the learned Magistrate decided to take cognizance for the offences under Section 420 & 506 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act (hereinafter referred to as the “N.I. Act”). The learned Magistrate, however, in exercise of his power under Section 204 Cr.P.C. found sufficient materials to proceed only against Gautam Kumar (petitioner no. 1) and Mala Devi (petitioner no. 3). So far as petitioner no. 1 & 3 are concerned, they did not challenge the order dated 18.01.2018 passed by learned Magistrate.

So far as petitioner no. 2 Chikku @ Chikku Kumar and one more person who was sought to be made accused namely, Vivek Bharti



are concerned, they were not summoned and the complaint against them was dismissed in terms of Section 203 Cr.P.C.

The complainant-opposite party no. 2 found himself aggrieved with this order by which two of the named persons in the complaint petition were not summoned by the learned Magistrate and against two cognizance was taken only u/s 420 & 506 IPC and Section 138 of the N.I. Act.

It appears that the complainant-opposite party no. 2 moved in revision against the order dated 18.01.2018 passed by learned Magistrate. The grievance of the complainant-opposite party no. 2 as it appears from the reading of paragraphs '2' and '3' of the impugned order was that even though there were materials against them, the learned Magistrate did not issue summon against them and decided to proceed only against two persons namely petitioner no. 1 and petitioner no. 3 that too cognizance was taken only u/s 420 & 506 IPC and Section 138 of the N.I. Act.

It further appears from the array of parties mentioned in the impugned order as well as from the submissions of learned counsel for the petitioners that petitioner no. 2 and another person Vivek Bharti who were not summoned by the learned Magistrate were not impleaded as parties in the revision application and no notice was issued to them. Petitioner nos. 1 and 3 also were not impleaded even as the complainant-O.P. No. 2 wanted the court to take a view that cognizance should have been taken under some more Sections of the I.P.C.



It further appears that the learned Additional District & Sessions Judge-1st Court, Jamui proceeded to consider the statements of the inquiry witnesses and finally took a view that a prima-facie case under Section 406, 420, 120B, 323, 217, 504/34 of the Indian Penal Code and 138 of the N.I. Act is made out against all the four persons who are mentioned in the complaint petition in the column of accused. The learned court having said so, set-aside the order dated 18.01.2018 and directed the learned Magistrate to pass a fresh order in accordance with law in the light of the materials noticed by the learned Additional District & Sessions Judge-1st Court, Jamui.

Learned counsel for the petitioners submits that after the impugned order was passed by the learned Additional District & Sessions Judge-1st Court, Jamui, the learned Magistrate has in obedience thereto passed a fresh order issuing summons to all the four accused persons on 16.07.2018.

This Court finds from the present application that three petitioners have moved this court challenging the order passed by the learned Additional District & Sessions Judge-1st Court, Jamui. They are aggrieved by the order setting-aside the order dated 18.01.2018 passed by learned Magistrate and direction issued to him to pass a fresh order.

So far as the subsequent order dated 16.07.2018 passed by learned Magistrate is concerned, the same is not under challenge as informed to this Court as according to learned counsel for the



petitioners the subsequent order has been passed in the light of the order of learned A.D.J.-I, Jamui.

When this Court called upon learned counsel for the petitioners to inform as to whether petitioner nos. 1 and 3 against whom summons were issued vide order dated 18.01.2018 had challenged the said order before any competent court of law, learned counsel has informed that these two petitioners i.e. petitioner nos. 1 & 3 had not challenged the order dated 18.01.2018 passed by learned Magistrate.

To this Court, thus, it appears that the order dated 18.01.2018 in so far as it relates to petitioner nos. 1 & 3, has attained finality. The complainant-opposite party no. 2 had, though moved against the order dated 18.01.2018 by which the learned Magistrate had dismissed the complaint against petitioner no. 2 and another person namely, Vivek Bharti and he had also a grievance that cognizance has been taken only under Sections 420 and 506 IPC r/w Section 138 of the N.I. Act the petitioner nos. 1 and 3 had no grievance.

The learned court, has after hearing the revision application in absence of the petitioners and Vivek Bharti could not have set-aside the entire order dated 18.01.2018. This Court finds that the learned Additional District & Sessions Judge-1st Court, Jamui has clearly erred in setting-aside the entire order dated 18.01.2018 passed by learned Magistrate and in taking a view which were against the petitioners.

One of the contentions of learned counsel for the petitioners is that even if the revision application was to be entertained against the



part of the order dated 18.01.2018 by which the complaint against the petitioner no. 2 and Vivek Bharti was rejected, it was incumbent upon the learned revisional court to issue notice to petitioner no. 2 and to the said Vivek Bharti before interfering with the part of said order. In this case, no notice was issued to petitioner no. 2 and the entire order dated 18.01.2018 has been set-aside whereafter the learned Magistrate has passed a fresh order dated 16.07.2018 summoning all the accused persons. According to him, for setting-aside the whole order and taking a different view all the four proposed accused should have been heard.

Learned counsel for the opposite party no. 2 was heard yesterday. This Court called upon him to answer as to whether at all the petitioners and/or Vivek Bharti were heard before setting-aside the order dated 18.01.2018 passed by learned Magistrate.

Today, learned counsel for O.P. No. 2 submits that he could not contact his client but according to him, on perusal of paragraphs '3' & '6' of the impugned order it would give an impression that both the parties were heard meaning thereby that the complainant as well as the proposed accused were also heard.

Learned counsel for the complainant-opposite party no. 2 further submits that the complainant-opposite party no. 2 had challenged the entire order dated 18.01.2018 because he was aggrieved that the learned Magistrate had taken cognizance only under Section 420, 506 of the Indian Penal Code and Section 138 of the N.I. Act. The complainant wanted that cognizance should also be taken against other



sections of the I.P.C. which had not been taken by the learned Magistrate.

Having heard learned counsel for the petitioners as well as learned counsel for the complainant-opposite party no. 2, this Court is of the considered opinion that the learned Additional District & Sessions Judge -1st Court, Jamui entertained the revision application without giving any opportunity of hearing to the petitioners. If the entire order dated 18.01.2018 was under challenged then the persons who were summoned or not summoned all were required to be made parties and they were required to be heard.

This Court finds from the array of parties mentioned in the impugned order that except the State of Bihar there was no opposite party. In paragraph '3' of the impugned order, the learned Additional District & Sessions Judge-1st Court, Jamui has discussed the statements of the inquiry witnesses. In paragraph '4' he has mentioned that on behalf of the prosecution, Public Prosecutor has appeared but he failed to appreciate that it was a private complaint and the order which was under challenge, if set-aside and a different view is taken the same will affect the accused persons/proposed accused persons.

One more thing which this Court finds from the impugned order is that the learned Additional District & Sessions Judge-1st Court, Jamui himself took a view that a prima-facie case under various sections of the I.P.C. and N.I. Act was made out, therefore, nothing remained to be considered by the learned Magistrate. Whether a



prima-facie case is made out under one provision or another under I.P.C. should have been left to be considered by the learned Magistrate but even that power has been exercised by the learned Additional District & Sessions Judge-1st Court, Jamui himself.

In course of hearing in view of sub-Section (3) of Section 399 of the Code of Criminal Procedure a question, though, arose as to the maintainability of the revision application but learned counsel for the petitioners has satisfied this court with his submission that according to sub-Section (3) of Section 399 of the Cr.P.C., no further proceeding by way of revision would lie at the instance of such person who had moved in revision. So far as these three petitioners are concerned, they were not even made parties to the revision application before the learned Sessions Judge.

Therefore, this Court having been convinced entertained this revision application.

In ultimate discussion, this Court finds that the impugned order dated 23.06.2018 passed by the learned Additional District & Sessions Judge-1st Court, Jamui in Cr. Rev. No. 10/2018 is not sustainable. It is liable to be set-aside and is accordingly set-aside.

Any subsequent order pursuant to the direction of the learned revisional court would lose it's efficacy. The learned Additional District & Sessions Judge -1st Court, Jamui shall hear all the parties afresh and pass an appropriate order in accordance with law.



Learned counsel for the complainant-O.P. No. 2 submits that he will take steps to implead all the summoned/non summoned accused/proposed accused of the complaint petition as parties to the revision application within a period of 30 days from today. The petitioners shall not delay their appearance after they are made parties. Thereafter, the learned A.D.J.-I, Jamui shall dispose of the revision application as early as possible preferably within a period of three months from the date the complainant-opposite party no. 2 takes steps for addition of parties.

This application stands allowed to the extent indicated herein-above.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	27.08.2022
Transmission Date	27.08.2022

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

