

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8864 of 2015

Arising Out of PS. Case No.- Year-1111 Thana- District-

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1. Anil Sao Son of Late Ramchandra Sao
 2. Arjun Gupta Son of Late Janglu Sao
 3. Surendar Kumar Sao Son of Late Deoki Sao All are residents of Mohalla - Purani Sarai Road, Jehanabad Town, P.S. - Town, District - Jehanabad.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Vipin Bihari Sharma, Advocate, Son of Late Krishnadeo Sharma
3. Anil Kumar Sharma, Advocate Son of Vipin Bihari Sharma Resident of Mohalla - Gararia Khand, P.S. - Town, District - Jehanabad.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. S.K. Lal, Advocate Mr.Pritish Kumar Lal, Advocate
For the Opposite Party/s	:	Mr. Prabhat Kumar Sharan, Advocate Mr. Hemant Kumar Sharan, Advocate Mr. Jayant Kumar Sharan, Advocate
For the State	:	Mr. Jitendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

Date : 15-02-2023

Heard Mr. S.K. Lal, learned counsel for the petitioners, learned counsel for the informant as also Mr. Jitendra Kumar Singh, learned APP for the State.

2. This application has been preferred for quashing of the order dated 25.07.2014 passed by the Court of Adhoc Additional Sessions Judge -IVth, Jehanabad in Cr. Rev. No. 16 of 2001 by which the criminal revision application was dismissed as time barred.



3. The prosecution story is/are as follows :-

(i) there is/was a piece of land on Plot No. 233, Khata No. 50 at Purani Sarai, Jehanabad which originally belonged to Tetri Telin, she was issueless who dedicated the rooms to the '*idol*' of the '*Radhe Krishna Jee*' by registered deed dated 20.06.1942 with a provision to utilize the income from the property for the '*Rajbhog*' and '*Sringar*' of the '*deity*' installed in the rooms;

(ii) initially, Pandit Jadunandan Sharma, the great grand-father of Opposite Party No. 2 was looking after the same. However, with the passage of time, his ancestor became dishonest, shifted the '*deity*' to some other place and after the death of Jadunandan Sharma, his son, Krishnadeo Sharma started managing the affairs. Krishnadeo Sharma is the father of Opposite Party No. 2 and grand-father of Opposite Party No. 3;

(iii) as the local people were not satisfied with their functioning and were disturbed by the misuse of the income of the property; they constituted a committee for construction of new temple in place of the old one which was also approved by the Bihar State Religious



Board of Trust (henceforth for short 'the Trust');

(iv) the allegation is that the Opposite Party No. 2, a lawyer removed the '*idol*' from the property, the same was informed to the police, it was followed by submission of a report by the police to the Sub-Divisional Magistrate, Jehanabad for taking steps under Section 144 of the Code of Criminal Procedure (henceforth for short 'the Cr.P.C.');

(v) meanwhile, local people filed complaint against them for offences registered under Sections 379, 411 and 295 of the Indian Penal Code.

4. The case of the Opposite Party Nos. 2 and 3 is/are that the land originally belong to Tetri Telin which was dedicated by registered deed on 02.06.1942 to '*deity*' Radha Krishna Jee. Further after the death of Tetri Telin, Pandit Jadunandan Sharma let out the property on rent to Sheolakhan Sah and after his death, his son has given vacant possession to Opposite Party No. 2 in 1989.

5. During the revisional survey, it was recorded in the name of the father of O.P. 2, Krishnadeo Sharma and there was no '*idol*' of '*Shri Radha Krishna Jee*' in the property under proceeding. However on 10.10.1989,



they found a new '*idol*' of '*Shri Radha Krishna Jee*' installed over the property and as stated above, the police submitted a report for initiation of proceedings under Section 144 of 'the Cr.P.C'.

6. Mr. S.K. Lal, learned counsel for the petitioners submit that the learned Sub-Divisional Magistrate, Jehanabad on the basis of the said report initiated proceeding under Section 144 of 'the Cr.P.C'. restraining both sides from going over the property further directing them to file their respective show cause. Later, the proceeding was converted under Section 145 of 'the Cr.P.C'.

7. It is further submission of the learned counsel for the petitioners that the then Sub-Divisional Magistrate, Jehanabad heard the argument on 01.09.1999 and reserved the order. He was later transferred and as such, the petitioners were under the belief that no order has been passed in the matter.

8. However, on 24.01.2001, the petitioners came to know that by putting antedate, the then Sub Divisional Magistrate, Jehanabad had passed order on 01.09.1999 itself. Thereafter, an application was preferred for procuring certified copy of the order on 25.01.2001 which



was made available on 24.02.2001 and thereafter, revision petition filed on 27.02.2001 along with limitation petition for condoning the delay.

9. In the meantime, the father of petitioner no. 1, namely Sri Ramchandra Sao died during the pendency of criminal revisional application on 21.06.2006 thereafter, the legal representative filed petition to become necessary party in the proceedings.

10. On 14.02.2013, the petitioners came to know that on 04.11.2006 itself, although the name of Sri Ramchandra Sao was deleted but without substitution of his name, the date for hearing was fixed. However, immediately thereafter, the substitution petition was filed which remained pending. On 15.07.2014, the revision application was taken up and on the very same day, it was dismissed.

11. Learned counsel for the petitioners submit that since Ramchandra Sao's name was not deleted, they could not appear on the date of hearing and an order was passed behind their back, thus seriously prejudicing their case. Accordingly, the present petition is fit to be allowed.

12. In support of his case, learned counsel for the petitioners cited a case of Hon'ble Supreme Court in the



case of **Surya Baksh Singh Vs. The State of Uttar Pradesh** reported in **(2014) 14 SCC 222** to submit that the Court has to follow certain course in the matter in absence of Pleader.

13. Learned counsel for the petitioners further cited another order of the Apex Court in the case of **Krishnan and Anr. Vs. Krishnaveni & Another** reported in **(1997) 4 SCC 241** in support of his case that after the dismissal of revision petition, second revision before the High Court can be preferred.

14. The other citation put forward by the learned counsel for the petitioners relate to Hon'ble Apex Court order in **Deputy Registrar Co-operative Societies and Others Vs. Bunni Lal Chaurasia** reported in **(2005) 11 SCC 570** relating to non-compliance with principles of natural justice.

15. Learned counsel for the informant, on the other hand, took this Court to the order sheet to show that learned Adhoc Additional Session Judge-IV, Jehanabad in the very first line of order dated 25.07.2011 stated that *'attendance' has been filed on behalf of the revisionist-petitioner-Ramchandra Sao as well as on behalf of the*



Opposite Party- Respondent, Vipin Bihari Sharma & Ors.
The case has been called out repeatedly but no one appeared on behalf of the revisionist up to 4:00 O' Clock. However, opposite party is present''

16. He has submitted that contrary to the submission put forward by the learned counsel for the petitioners that since the name of Ramchandra Sao was not deleted and the others were not substituted, they could not appear in the Court and thus, their case was prejudiced. He further submits that the order clearly inscribes Ramchandra Sao (dead) and further the name of Arjun Gupta was there. They further filed attendance and the petitioners have not denied the said fact that has been recorded by the learned Sessions Judge. He further submitted that after having lost the criminal revision before the learned Sessions Judge, he cannot prefer another criminal revision petition by way of Section 482 of the Cr.P.C and as such, on the said ground alone, the case is fit to be dismissed.

17. It is his further submission that when sufficient cause for condonation of delay is not there, the same cannot be entertained.

18. He has cited two decisions of the Patna



High Court (DB) in the case of The **State of Bihar and others Vs. Ramesh Kumar Yadav @ Ramesh Yadav & Anr.** reported in **2008(4) BBCJ 252** and **The State of Bihar & Others Vs. Dayanand Jha** reported in **2008 (4) BBCJ 252** in support of his case.

19. The State, on the other hand echoing the submissions put forward by the learned counsel for the informant cited an order of Patna High Court in **Sabo Devi & Ors. Vs. The State of Bihar & Anr.** reported in **2015(3) PLJR 837** on the point of limitation to show that unexplained and unreasonable delay cannot be condoned. He as such, also opposes the petition preferred by the petitioners.

20. This Court has gone through the facts of the case as also the submissions put forward by the respective counsels and the case laws that has been cited by them.

21. It would be important to take into account the observation of the learned Sessions Judge in Cr. Revision No. 16 of 2001 disposed of on 25.07.2014.

22. From the order sheet as observed above, it clearly starts with the word '*attendance*' stating



therein that the attendance was filed on behalf of the revisionist-petitioners and the Opposite Party no. 2 but no one turned up on their behalf uptill 4 'O' Clock to contest the matter, although the Opposite Party was present. Further, it was also held in the order that the name of the Revisionist No. 1, Ramchandra Sao has been deleted on the petition dated 10.10.2006 filed by his son, Anil Kumar vide order dated 04.11.2006. However, the name of heirs were not substituted. The learned Adhoc Additional Sessions Judge-IV, Jehanabad after going through the entire facts held and the relevant paragraphs read as follows:

“From the perusal of order dated 01.09.1999 of the learned S.D.M. and the date of filing of this Cr. Revision petition no. 16/2001 filed on dated 27.02.2001 it is clear that his criminal revision has been filed after 544 days whereas article 131 of the Limitation Act 1963 provide only 90 days for filing revision. To condone the delay the revisionist has filed a petition u/s 5 of the Limitation Act in which it is stated that order dated 01.09.99 was passed by S.D.M., Jehanabad is antedated therefore the petitioner could know about the passing of order on 25.01.2021 and on



that very day chirkut was applied and the certified copy of order was supplied to the petitioner on 24.02.2001. 25.02.2001 was Sunday therefore revision was filed on 26.02.2001 within time from the date of knowledge and prayed to condone the delay.

In support of this fact nothing has been produced on behalf of revisionist and none have appeared on behalf of the revisionist to argue on this point. This Cr. Revision has been admitted by the learned Sessions Judge vide order dated 01.03.2001 subject to limitation.

This revision petition has been filed after 544 days of the order of the S.D.M. and meaning thereby the cr. revision has been filed 454 days delay and explanation given in a petition dated 27.02.2001 for condonation of delay is apparently not satisfactory at all and nothing either documentary or oral evidence or even argument has been pressed by the revisionist in their favour who are absent today also.



In support of their contention the O.P. has filed five rulling detailed below:

- 1. B.B.C.J. 2008 (4) page 565 (S.C.)
para 4 of the reported case*
- 2. B.B.C.J. 2008 (4) page 43 (S.C.)
para 3 to 6 of the reported case.*
- 3. B.B.C.J. 2008 (4) page 252 (S.C.)
para 7 and 8 of the reported case.*
- 4. B.B.C.J. 2008 (4) page 549 (S.C.)
para 1 to 3 of the reported case*
- 5. B.L.J.R. 1973 page 89 Patna High Court*

From the perusal of above rulling, I find that the above rulling are fully applicable in this case and the revisionist has not shown any satisfactory reason to condone the delay in filing this criminal revision.

So far the merits of this case is concern, this revision has filed the abstract copy of Khatiyani in which the disputed shop/house under khata 50 plot 233 area 1 decimal, has been recorded in the name of Mahadeo Sao and his wife Mostt. Tetri Telin w/o Late Mahadeo Sao died issueless. Mostt.



Tetri Devi w/o Late Mahadeo Sao has executed a registered deed of gift dated 02.06.14 in favour of Murty Radha Krishna Jee who is being looked after by Pandit Yadunandan Sharma in whose favour the compromise decree has been passed vide order dated 07.08.1950 signed on 12.08.1950 in favour of Murty Radha Krishna Jee Munta Ji Pandit Krishnadeo Sharma S/o Pandit Yadunandan Sharma (donee of the registered deed of gift of 1924) thereafter a series of criminal and civil litigation has been filed by the revisionist and the same was disposed off in favour of O.P. or their ancestor, so far as this revision petition is concerned, it is not maintainable even on the point of limitation. Hence the above point required no discussion and hence this Cr. Rev. is hereby dismissed which hopelessly time barred and order dated 01.09.1999 is hereby confirmed.”

23. Having gone through the order passed by the learned Sessions Judge-IV, Jehanabad, it is clear that each and every aspect of the case has been detailed out by the learned Sessions Judge in its order dated 25.07.2014 inasmuch as it



held that:

(i) the criminal revision was filed after 544 days whereas Article 31 of the limitation Act 1963 provided only 90 days for filing revision;

(ii) although the revisionist filed petition under Section 5 of the Limitation Act stating therein that they came to know about the order dated 01.09.1999 passed by the learned Sub-Divisional Judicial Magistrate, Jehanabad only on 25.01.2001 and immediately thereafter, preferred application for certified copy which was supplied on 24.02.2001 and 25.02.2001, being Sunday, the revision was filed on 26.02.2001, nothing was produced to support the said claim;

(iii) the revision petition was filed after 544 days and after subtracting the 90 days period that is allowed for such revision, still 454 days delay was/were there and the explanation given was not at all satisfactory;



(iv) even on the merit, the learned Sessions Judge held that the land on which the disputed house/shop stand was donated by Mostt. Tetri Telin to Shri Radha Krishna Jee's '*deity*' and thereafter, number of litigation (both civil and criminal) took place which ultimately came to be disposed of in favour of opposite parties and/or their ancestors and thus, the revision petition was not maintainable.

24. So far as the decision cited by the learned counsel for the petitioners is/are concerned, in view of the fact that the petitioner was given chance of hearing and the matter has been entertained under Section 482 of the Cr.P.C. against the Cr. Rev. order dated 25.07.2014, the decision cited in **Krishnan and Anr. Vs. Krishnaveni & Another** (supra) is not required.

25. However, this Court must record that although the inherent power of the High Court is available under Section 482 of 'the Cr.P.C.', the Hon'ble Apex Court in the decision cited above clearly held that it has to be exercised sparingly so as to avoid needless multiplicity of procedure,



unnecessary delay in trial and as such, the same can be applied only from case to case and in the particular facts and circumstances of that case.

26. So far as the decision cited in **Surya Baksh Singh Vs. The State of Uttar Pradesh** (supra) is concerned relating to absence of pleader at the hearing of appeal, it too does not come to the petitioners aid inasmuch as a bare perusal of the order sheet in criminal revision shows that the petitioners had knowledge of the posting of the case on that particular day and attendance to this effect was filed by them in the morning. It is another matter that they chose not to appear when the case was called and only after waiting till 4 O' Clock, the said order was passed.

27. Even then, the learned Court dealt with each and every aspect of the matter including the merits of the case.

28. So far as the decision cited by the learned counsel for the Opposite Party No. 2 in the case of **State of Bihar & Ors. Vs. Dayanand Jha** (supra) and **The State of Bihar & Others Vs, Ramesh Kumar Yadav @ Ramesh Yadav & Anr.** as also the decision cited by the State in **Sabo Devi & Ors. Vs The State of Bihar & Anr.** are concerned, this Court is in conformity with the decisions cited inasmuch



as the long/inordinate delay has to be fully explained and in absence of any justifiable or sufficient cause, the same cannot be condoned in a routine matter.

29. Having gone through the facts and circumstances of the case, the order of the learned Adhoc Additional Sessions Judge -IV, Jehanabad in Cr. Revision No. 16 of 2001 in the considered view of this Court, no cause for interference in the reasoned order dated 25.07.2014 is required.

30. The petition under Section 482 of 'the Cr.P.C'. is without any merit and is accordingly dismissed.

(Rajiv Roy, J)

Jagdish/Neha-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	20.02.2023
Transmission Date	

