

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.51155 of 2015**

Arising Out of PS. Case No.-1121 Year-2010 Thana- WEST CHAMPARAN COMPLAINT  
District- West Champaran

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1. Vinay Thakur, S/o Shankar Thakur
  2. Birendra Thakur, S/o Late Mangni Thakur
  3. Niraj Thakur, S/o Shankar Thakur
  4. Abhishek Thakur @ Dhamu, S/o Birendra Thakur,  
All are resident of village - Parsa, P.S.- Majhauiliya, District - West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Raghunath Thakur, S/o Kamla Thakur, R/o Village- Parsa, P.S.- Majhauiliya,  
District- West Champaran

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Rakesh Kumar No.1, Advocate  
For the Opposite Party/s : Mr. Shailendra Kumar No.1, APP

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**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA**  
**ORAL JUDGMENT**

**Date : 29-08-2023**

Heard learned counsel for the petitioners and learned  
A.P.P. for the State.

2. Learned counsel for the petitioners submits that the  
present application has been filed seeking quashing of the order  
dated 21.01.2015 passed by the learned Sessions Judge, West  
Champaran at Bettiah in Cr. Revision No. 238 of 2014 arising out  
of Complaint Case No. 1121-C of 2010, whereby the learned  
Sessions Judge dismissed the revision application filed by the  
petitioners against the order dated 26.06.2014 passed by the



learned Judicial Magistrate, 1<sup>st</sup> Class, Bettiah in Trial No. 2115 of 2014 arising out of Complaint Case No. 1121-C of 2010.

3. Learned counsel for the petitioners submits that the complainant has filed Complaint Case No. 1121-C of 2010 against the petitioners in which cognizance was taken under Section 392 of the Indian Penal Code by the learned Magistrate. Thereafter, the petitioners were taken into custody and after their release they filed an application dated 03.01.2014 under Section 245 of the Cr.P.C. and the same came to be rejected by order dated 26.06.2014 against which the petitioners preferred the instant Cr. Revision No. 238 of 2014 before the learned Sessions Judge, who also affirmed the order passed by the learned Magistrate whereby their application seeking discharge under Section 245 of the Cr.P.C. was rejected.

4. Learned counsel for the petitioners submits that the revisional order is bad on the ground that the same did not take into consideration the fact that no case under Section 392 of the Indian Penal Code was made out against the petitioners in the nature of evidence brought on record by the complainant during the course of inquiry and that petitioners came to be implicated on account of previous enmity.



5. Mr. Chandra Bhushan Prasad, learned A.P.P. vehemently opposes the submissions made by the learned counsel for the petitioners and submits that the present quashing application is nothing but a second revision which is barred under Section 397(3) of the Cr.P.C. Learned A.P.P. further relies on the judgment of the Supreme Court in the case of **Rajan Kumar Machananda Vs. State of Karnataka** reported in **1990 Supp SCC 132** to submit that in the said case, the Hon'ble Supreme Court, after recording the facts, had observed that a second revision did not lie at the instance of the State in the High Court in view of the provisions of Section 397(3) of Cr.P.C. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 Cr.P.C., asking for exercise of inherent powers. In exercise of that power, the High Court has reversed the order of the Magistrate as affirmed by the Sessions Judge. The question for consideration is as to whether the bar under Section 397(3) Cr.P.C. should have been taken note of to reject the revision at the instance of the State Government or action taken by the High Court in exercise of its inherent power has to be sustained. It is not disputed by the learned counsel appearing for the State that the move before the High Court was really on application for revision of the order of the Magistrate



releasing the truck. That is exactly what is prohibited under Section 397(3) Cr.P.C. Merely by saying that the jurisdiction of the High Court for exercise of its inherent power was being invoked, the statutory bar could not have been overcome. If that was to be permitted, every revision application facing the bar of Section 397(3) of the Code could be labelled as one under Section 482. We are satisfied that this is a case where High Court had no jurisdiction to entertain the revision.

6. Learned A.P.P. further submits that when a quashing application is filed challenging the order of revision passed by the Sessions Judge, in that event, this Court has to be cautioned and circumspect, for the reason that the application under Section 482 of the Cr.P.C. is basically a second revision which is barred under Section 397(3) of the Cr.P.C. but then fairly submits that if from perusal of the revisional order the Court comes to a conclusion that the reason assigned in the revisional order is bordering on perversity or from perusal of the impugned there appears to be a serious miscarriage of justice or legal provisions were ignored then this Court, in order to secure the ends of justice, can interfere in exercise of its inherent power under Section 482 of the Cr.P.C. and thus relies on the judgment of the Supreme Court in the case of **Madhu Limaye vs. The State of Maharashtra** reported in **1997(4)**



**SCC 551.** It is next submitted that language of Section 397 Cr.P.C. is clear and there is no ambiguity. It is next submitted that an aggrieved can prefer a criminal revision under Section 397(1) of the Cr.P.C. either before this Court or before the Court of learned Sessions Judge and thus it can be safely argued that once an aggrieved has availed his remedy before the learned Session then he is precluded from approaching the other forum in terms of Section 397 of the Cr.P.C. Learned A.P.P. also submits that since Section 482 Cr.P.C. starts with an non obstante clause that would mean merely on account of the fact that a person has preferred a revision in the Sessions Court, he need not be debarred from assailing the order before the High Court under Section 482 Cr.P.C. in order to prevent abuse of the process of the law and to secure the ends of justice but in absence of such proposition, as recorded hereinabove, application under Section 482 Cr.P.C. cannot be entertained.

7. Learned A.P.P. further submitted that Hon'ble Supreme Court in the case of **Manju Ram Kalita Vs. State of Assam** reported in **(2009) 13 SCC 313** at para 10 has observed:-

*“It is settled legal proposition that if the courts below have recorded the finding of fact, the question of re-appreciation of evidence by the third court does not arise unless it is found to be totally perverse.”*



8. Learned A.P.P. thus submits that from perusal of the order impugned, it would manifest that the learned revisional court, by placing reliance on the facts of the case, has come to a considered conclusion that the order rejecting the application of discharge of the petitioners by the learned Magistrate did not call for any interference.

9. Considering the submissions made by the learned A.P.P., the Court is not inclined to entertain the quashing application, which is hereby rejected.

**(Satyavrat Verma, J)**

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