

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23125 of 2016

Arising Out of PS. Case No.-1106 Year-2012 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Nawab Alam and Ors Son of late Manzar Alam
 2. Musarrat Nawab Daughter of Nawab Alam, Wife of Sharique Ahmad
 3. Kahkashan Nawab Daughter of Nawab Alam
 4. Sayama Nawab Duaghter of Nawab Alam
 5. Fahad Nawab Son of Nawab Alam all Resident of Mohalla- Mahalpur PS Biharsharif District Nalanda

... .. Petitioner/s

Versus

1. State of Bihar
2. Md. Sharique Ahmad Son of Mumtaz Ahmad resident of mohalla- 3-S. F.A. - 1/30 H.I.O. Housing Colony Bhatnath Road , Kankarbagh PS Agamkuan, District patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bhola Kumar, Adv.
For the O.P. No.1	:	Mr. Upendra Kumar, APP
For O.P. No.2	:	None

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

4 17-10-2023 The present petition, under Section 482 CrPC, has been preferred by the petitioners against impugned order dated 13.04.2015 passed by Ld. Additional Sessions Judge-VI, Patnacity, Patna whereby the Cr. Revision No. 751/2013, filed by Opposite Party No.2, has been allowed to the prejudice of the accused persons, who are petitioners herein, without giving any opportunity to them for hearing.

2. The relevant facts as emerging from the record are that a criminal complaint was filed by one Md. Sharique Ahmad who is Respondent No.2 herein against accused persons,



namely, 1. Nawab Alam, 2. Musarrat Nawab, 3. Kahkashan Nawab, 4. Sayama Nawab and 5. Fahad Nawab who are petitioners in the present petition.

3. However, after enquiry, Ld. SDJM, Patnacity dismissed the complaint under Section 203 CrPC *vide* order dated 21.10.2013 passed in C.A. Case No. 1106/2012. Being aggrieved by the aforesaid order of Ld. SDJM, the complainant preferred the aforesaid Cr. Revision No. 751/2013 before Sessions Court, Patna which was allowed by the impugned order dated 13.04.2015 setting aside the order dated 21.10.2013 passed by Ld. SDJM in CA. No. 1106/2012 and directing Ld. SDJM to conduct fresh inquiry and pass an appropriate order as per law.

4. While allowing the revision petition, Ld. Additional Sessions Judge held that as the complaint was dismissed without issuing summons to the accused persons, there was no need to issue notice to them. Hence, the petition was allowed without hearing the accused persons who were Respondents in the Criminal Revision.

5. Heard Ld. Counsel for the petitioner and Ld. APP for the State. However, nobody is present on behalf of Respondent No.2, despite valid service of notice.



6. Ld. Counsel for the petitioners submits that the impugned order has been passed against the statutory provisions of Section 401(2) CrPC, as per which, in the aforesaid situation, the accused persons have right to hearing and revisional court cannot dispose of criminal revision without giving an opportunity of hearing to the accused persons. He also relies upon *Manharibhai Muljibhai Kakadi Vs. Shaileshbhai Muljibhai Patel* [(2012) 10 SCC 517].

7. Ld. APP for the State fairly concedes that the impugned order dated 13.04.2015 has been passed against statutory provision and binding precedent and hence the same is not sustainable in the eyes of law.

8. Considered the submissions advanced by the parties and perused the relevant materials on record.

9. Before I consider the submissions of the parties, it would be pertinent to refer to Section 401 Cr. P.C., which reads as follows:-

“401.High Court's powers of revision.—(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has



had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

10. It clearly emerges from Sub Section (2) of Section 401 Cr. P.C. that no order under revisional jurisdiction can be passed by the Court to the prejudice of the accused or any other person without giving an opportunity of hearing to him. Even otherwise, passing any adverse order against any person without giving him an opportunity of hearing is hit by the principles of Natural Justice.

11. **Hon’ble Supreme Court** in **Manharibhai Muljibhai Kakadia** case (supra) had also occasion to consider the similar facts and circumstances and the question of law involved. In that case, **Hon’ble Supreme Court** held that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the



Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code.

12. Similar facts and issues were also involved in **A.N. Santhanam Vs. K. Elangovan [(2012) 12 SCC 321]**, wherein **Hon'ble Supreme Court** held that a plain reading of sub-section (2) of the said provision makes it abundantly clear that the High Court in exercise of its revisional power cannot pass any order which may cause prejudice to the accused or other persons unless he has an opportunity of being heard either personally or by pleader in his own defence.

13. In the background of similar facts and circumstances, in **P. Sundarrajan & Ors. Vs. Vidhya Sekar**



[(2004) 13 SCC 472], Hon’ble Supreme Court held that the order of the High Court is ex facie unsustainable in law by not giving an opportunity to the appellant to defend his case that the Ld. Judge violated all principles of natural justice as also the requirement of law of hearing a party before passing an adverse order.

14. Considering the aforesaid facts and circumstances, the impugned order is not sustainable in the eyes of law, hence, the same is set aside and Criminal Revision No. 751 of 2013 is restored to its file for hearing and disposal by the Sessions Court on merits after notice to the petitioners herein. It is clarified that this Court has not expressed any opinion whatsoever on the merits of the case.

(Jitendra Kumar, J)

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