

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.862 of 2017

Arising Out of PS. Case No.-593 Year-2016 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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Dineshwar Choudhary Son of Late Sant Lal Choudhary, resident of Village-
Ranitole, P.S.- Bachhwara, District- Begusarai.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jagannath Singh, Adv. With
	:	Mr. Md. Ghulam Mustafa, Adv.
For the State/s	:	Mr. Jagdher Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

6 27-04-2023 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The present criminal revision application has been filed against the order dated 16.05.2017 passed by Judicial Magistrate 1st Class, Darbhanga in Misc. Case No. 50/2016 in Criminal Complaint (Protest) Case No. 593 of 2016 (arising out of Singhwara P.S. Case No. 337/2012) by which the Ld. Magistrate has dismissed the complaint of the petitioner.

Counsel for petitioner submits that he is well aware that he has filed the criminal revision and only question of legality, correctness and propriety shall be tested in this case. He specifically submits that there is a question of illegality involved in this case as the order impugned has been passed by the Judicial Magistrate 1st Class, Darbhanga ignoring the correct position of law and in gross violation of section 202(2) of the Cr.P.C.

Counsel submits that petitioner is the informant of

Singhwara P.S. Case No. 337 of 2012 dated 14.12.2012 filed under Section 302/34 of the I.P.C. for murder of his sister for which the present F.I.R. was lodged. Counsel submits that after investigation, the final form has been submitted in this case bearing Form No.18 of 2014 dated 28.02.2014. Counsel submits that petitioner has filed the protest petition in this case. He further submits that the Judicial Magistrate 1st Class has entertained his protest and converted his protest into complaint and started taking examination of complainant on solemn affirmation and also examine inquiry witness 1 and 2 and thereafter, passed order and refused to take cognizance.

Counsel for petitioner submits that the said order is absolutely bad in law due to the reason that Section 202(2) of the Cr.P.C. is very much clear and states as follows:-

“ In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.”

Counsel submits that the copy of the protest is attached with this petition as Annexure-5. He submits that from Annexure-5, it is crystal clear that there were in total seven witnesses mentioned in the complaint petition and the present complaint was filed under Section 302 / 34 of the I.P.C. He submits that Section 302 / 34 of the I.P.C. is exclusively triable by Court of Session and therefore, the legislative direction as per proviso of sub-section 2 of Section 202 of Cr.P.C. is that the Magistrate shall call upon the complainant to produce all his seven witnesses in the present case and examine them on oath. From the record, it transpires that instead of all seven witnesses, the Magistrate has examined only two witnesses.

In this view of the matter, it transpires to this Court that there is a gross error made by the Judicial Magistrate which is necessary to be rectified.

In the above mentioned facts and circumstances, let the order impugned dated 16.05.2017 passed by Sri Kanhaiya Lal Yadav, Judicial Magistrate 1st Class, Darbhanga in Misc. Case No. 50 of 2016 in Criminal Complaint (Protest) Case No. 593 of 2016 (arising out of Singhwara P.S. Case No. 337/2012) is hereby set aside and direction has been made to the Judicial Magistrate 1st Class, Darbhanga to follow the procedure laid

down under Section 202(2) of the Cr.P.C. and then only pass order in accordance with law on the protest -cum- complaint case.

With this direction, this Cr. Revision Application is hereby allowed.

(Dr. Anshuman, J.)

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