

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1283 of 2022

Arising Out of PS. Case No.-103 Year-2020 Thana- PIRBAHOR District- Patna

Priyanka Kumari @ Priyanka Wife of Sri Arvind Kumar @ Arvind Resident of Mahavir Lane, Mussalahpur, Police Station - Pirbahore, District - Patna (Bihar).

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Saket Gupta, Advocate

For the Opposite Party/s : Mr. Anil Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 19.10.2023

Heard Mr. Saket Gupta, learned counsel for the petitioner and Mr. Anil Kumar, learned A.P.P. for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 20.11.2021 passed in Criminal Revision No. 250 of 2021 by the learned District and Sessions Judge, Patna by which he has dismissed the criminal revision application, which was filed against the order dated 30.05.2020 passed by learned Chief Judicial Magistrate, Patna in Pirbahore P.S. Case No. 103 of 2020 by which cognizance of the offences under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act has been taken against the petitioner.

3. The aforesaid Pirbahore P.S. Case No. 103 of 2020



was instituted on 17.02.2020 in respect of an occurrence of the offence which took place on the same date on the basis of written report of one Shivendra Kumar Shivam, who is the son of the deceased, namely, Late Dhirendra Kumar Akela. In his written report he alleges that there was a passage dispute between the informant's family and the family of the petitioner and earlier also all the accused persons have threatened to kill the father of the informant. It is further alleged that the petitioner along with other accused persons hatched a conspiracy and killed the father of the informant.

4. That on the statement of the son of the deceased, the F.I.R was instituted and investigation was taken up. After investigation, the police has submitted Final Form No. 80 of 2020 dated 12.05.2020, stating therein that co-accused persons namely, Suraj Kumar, Chandan Kumar @ Khujli @ Machli @ Dalla, Aman Kumar and Akhilesh @ Chedi have been charge sheeted under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act. The police further stated in the aforesaid charge sheet that the petitioner and other co-accused persons namely, Sujit Mehta, Chhotu Sao, Brajendra Kumar Sinha @ Brijendra Kumar Sinha, Jaywanti Devi @ Jayanti Devi, Prity Bharti @ Preeti Bharti @ Priti Kumari @



Preeti, Chandan Kumar @ Chandan and Arvind Kumar @ Arvind, no evidence was gathered during investigation implicating the role of this petitioner or the case to be false. The learned Chief Judicial Magistrate, Patna differing with the police report took cognizance by an order dated 30.05.2020 of the offences punishable under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act.

5. The petitioner has subsequently challenged the order dated 30.05.2020 passed by the learned Chief Judicial Magistrate, Patna before the learned District and Sessions Judge, Patna in Criminal Revision No. 250 of 2021, the said order dated 20.11.2021 passed in Criminal Revision No. 250 of 2021 is under challenged in the present application.

6. Learned counsel for the petitioner assailing the impugned order submitted that the petitioner is innocent and has been falsely implicated in the present case due to admitted property dispute and no material has come during investigation which remotely suggest that the petitioner was involved in the present crime in question. The revision order is bad in law on the ground that the same did not take into consideration the fact that no case under Sections 302, 120B and 34 of the Indian Penal Code and Section 27 of the Arms Act was made out



against this petitioner in the investigation and the learned Chief Judicial Magistrate while differing with the police report has passed a mechanical order and the revisional Court also erred in law by mechanically rejecting the application which is order impugned in the present quashing application.

7. On the other hand Mr. Anil Kumar, learned Additional Public Prosecutor appearing on behalf of the State submitted that no reason is required to be recorded at the time of taking cognizance by Court of Chief Judicial Magistrate. If the Magistrate has found sufficient *prima facie* material to summons the accused as would reflected from the order impugned, no illegality can be found with the order. He further submits that though the present application has been filed under Section 482 of the Cr.P.C. the same is in the nature of the second revision, which is barred under Section 397 (3) of the Cr.P.C. He relies upon the judgment of the Hon'ble Supreme Court in the case of **Rajan Kumar Machnanda vs. State of Karnataka reported in 1990 (Supplementary) SCC Page 132**, in the said case, the Hon'ble Supreme Court, after recording the facts, had observed that the second revision did not lie at the instance of the State in the High Court in view of the provision of 397(3) of the Cr.P.C.



8. Obviously, to avoid this bar, the application moved by the State before the High Court was stated to be under Section 482 of the 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 to whether the bar under Section 397(3) of the 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 an application for revision of the order of the Magistrate releasing the truck. That is exactly what is prohibited under Section 397(3) of the Cr.P.C. Merely while saying that the jurisdiction of the High Court was exercised of its inherent power was being involved, the statutory bar could not have been over come. If that was to be permitted, every revision application facing the bar of Section 397(3) of the Cr.P.C. could be levelled as one under Section 482 of the Cr.P.C. We are satisfied that this is the case where the High Court had no jurisdiction to entertain the revision.

9. Learned APP further submits that when a quashing



application is filed challenging the order of the revision passed by the Sessions judge, in that event, this Court has to be cautious 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 from perusal of the revisional order of the Court comes to the conclusion that the reason assigned in the revisional order is bordering on perversity or from perusal of the impugned, there appears to be 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. State of Maharashtra reported in 1997 (4) SCC Page 551.** He further submits that the language of Section 397 of the 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 the this Court or before the Court of the learned Sessions Judge and thus, it can be safely argued that once an aggrieved had availed the remedy before the learned Sessions Judge, then he is precluded from the approaching the another forum in terms of Section 397 of the



Cr.P.C.

10. Learned Additional Public Prosecutor also submits that since Section 482 of the Cr.P.C. starts with an non obstante clause that would mean merely on account of the fact that the person has preferred a revision in a Sessions Court, he need not be debarred from assailing the order before the High Court under Section 482 of the Cr.P.C.. In order to prevent abuse of the process of law and to secure the ends of justice what in absence of such preposition, as recorded herein above, application under Section 482 cannot be entertained.

11. Learned Additional Public Prosecutor further submitted that the Hon'ble Supreme Court in the case of **Manju Ram Kalita vs. State of Assam reported in 2009 (13) SCC Page 313 at para 10** has observed "it is settled legal proposition that if the Courts below had recorded the findings of fact, the question of re-appreciation of the evidence by the third Court does or not arise unless it is found to be totally perverse".

12. Learned Additional Public Prosecutor submits that from perusal of the order impugned it manifest that the learned Revisional Court, by placing reliance on the facts of the case has come to the considered conclusion that the order taking cognizance of the offences under Sections 302, 120B and 34 of



the Indian Penal Code and Section 27 of the Arms Act against these petitioner by the learned Chief Judicial Magistrate did not call for any interference.

13. Considering the submissions made by the learned Additional Public Prosecutor, this Court is not inclined to entertain this quashing application.

14. In the result, this quashing application stands rejected.

15. Prayer is refused.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
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