

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67405 of 2022

Arising Out of PS. Case No.-220 Year-2020 Thana- LADANIA District- Madhubani

1. Md. Zaheeruddin Babar @ Md.Jahiruddin @ Babar Son Of Late Mohd. Nasiruddin R/O Vill.- Piprahi, Ward No.13, P.S.- Ladaniya, Distt.- Madhubani (BIHAR)
2. Md. Moinuddin @ Md.Moieddin Son Of Late Mohd. Nasiruddin R/O Vill.- Piprahi, Ward No.13, P.S.- Ladaniya, Distt.- Madhubani (BIHAR)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Nath Jha Mr. Sunny Kumar
For the Informant	:	Mr. Bimal Kumar Mr. Ashok Kumar
For the Opposite Party/s	:	Mr. Lalan Kumar

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 21-03-2023 Heard the parties.

This application has been filed on behalf of the petitioners for quashing the order dated 27.10.2021 passed by Judicial Magistrate, 1st Class, Madhubani in Ladaniya P.S. Case No. 220 of 2020 and the order dated 29.08.2022 passed by learned Additional Sessions Judge, III, Madhubani in Criminal Revision No. 254 of 2021.

The prosecution story in short is that the Informant Yusuf Yunus filed a petition before the S.H.O. Ladaniya (Madhubani) stating therein that he along with his family are living in New Delhi and owns some landed property at his



village Piprahi. On 26th October, 2020 at 04 P.M. when he was standing at his own field then the accused No. 01 and accused No. 02 came there and started abusing him. The Informant protested and on such protest both the accused No. 01 and 02 called many people there by mobile phone. Both the accused No. 01 and 02 tied the informant with Gamchi and restrained him there. Meanwhile other accused persons as named in FIR also reached on the spot with Lathi, Danda and Rod and thereafter assaulted the informant brutally. It has further been alleged by the informant that the accused persons took away Rs. 3000 from his pocket and broke the mobile handset of the informant and then the accused persons fled away and left the informant on the field.

The police after investigation submitted charge-sheet against six accused persons but the petitioners were not sent-up for trial. Thereafter, the learned Magistrate took cognizance after differing with the final form against the petitioners but by the impugned order it does not appear that he has examined any material against the petitioners. The cognizance has been taken in a mechanical manner against the petitioners and no material whatsoever, has been discussed by the Magistrate because of which he has differed with the final form exonerating the



petitioners and took cognizance.

The parties thereafter, preferred Criminal Revision vide Criminal Revision No. 254 of 2021 which has been disposed of by the impugned order dated 29.08.2022. In the revision the Additional Sessions Judge has narrated the facts of the case and has held that there are sufficient materials against the petitioners and proceeded against them in the matter and thereafter, the Revision was dismissed.

Learned counsel for the petitioners further submitted that the petitioner No. 02 is a bright student and has qualified in the NEET Examination but because of the false prosecution he is unable to pursue his studies further.

Learned counsel for the petitioners further submits that the prosecution of the petitioners is malicious and it is just because of the land dispute between the parties for which Title Suit No. 17 of 2017 is also pending. He also submits that the petitioners are in possession of the land in question and the Revenue Authorities have also issued rent receipt in their favour.

Learned counsel for the Opposite Party No. 02 and the learned APP for the State have opposed the prayer of the petitioners and have submitted that once the Revisional Court has refused to interfere in this matter then this Court in its



jurisdiction under Section 482 Cr.P.C. cannot and should not interfere in the impugned orders.

Learned counsel for the Opposite Party further submits that the order of the learned Magistrate is perfectly justified as the same is passed after considering the materials available on record and it is no requirement of law that he should mention materials in the impugned order while differing with the final form by which the two petitioners were exonerated.

Learned counsel for the petitioner has also relied upon the Judgment of the Hon'ble Supreme Court in the case of ***Krishnan and Anr Vs. Krishnaveni and Anr. 1997 (4) SCC 241*** of which Paragraph 09 and 10 are quoted below:-

“09. *The inherent power of the High Court is not one conferred by the code but one which the high Court already has in it and which is preserved by the Code, the object of Section 397 (3) is to put a bar on simultaneous revisional applications to the High Court and the court of Sessions so as to prevent unnecessary delay and multiplicity of proceeding as seen , under sub-section (3) of section 397 revisional jurisdiction can be invoked by" any person" but the code has not defined the word 'person', However, under section 11 of the IPC, 'PERSON' INCLUDES ANY COMPANY OR ASSOCIATION or body of person whether incorporated or not. The word 'person' would, therefore include not only the natural person but also juridical person in whatever form designated and whether incorporated or not By implication the State stands excluded form the purview of the word 'person' for the purposes of the limiting its right to avail the revisional power of the High Court under Section 397 (!) of the code for the reason that the Sate, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as it deems proper.*



The Object behind criminal law is to maintain law, public order, stability as also peace and progress in the society, Generally, Private complaint under section 202 of the code are laid in respect of non-cognizance offences or when it is found that police has failed to perform its duty under Chapter XII of Code or to report as mistake of fact. In view of the principle laid down in the maxim Ex debito justitiae i.e. in accordance with the requirements of justice, the prohibition under section 397 (3) on revisional power given to the High Court would not apply when the state seek s revision under section 401 . So the state is not prohibited to avail the revisional power of the high Court under section 397 (1) read with section 401 of the code.

10. Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397 (1) or under inherent power of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397 (3) or section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstance, to exercise the inherent power and in an appropriate case even revisional power and in appropriate case even revisional power under Section 397 (1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity or procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justices can be ensured only when expeditious trial is conducted.”

So far as the case of the petitioners is that the case
has been lodged because of the land dispute and the petitioners



are maliciously prosecuted and for that the petitioners have relied upon the Judgment of Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajanlal reported in 1992 SC 604* in which it has been held that malicious prosecution should not be allowed to continue.

I have gone through the records of the case. So far as the first argument about the maintainability issue is concerned, relying on the judgment of Hon'ble Supreme Court in the case of *Krishnan and Anr Vs. Krishnaveni and Anr. (Supra)*, this application is held to be maintainable.

The submission of the petitioners that the impugned orders of the learned Magistrate as well as revisional orders are illegal and cannot be sustained also seems to be correct.

It is a trite law that any order passed by an authority should be a reasoned order and any order devoid of reasons is no order in the eye of law.

In the present case when the Magistrate has differed from the final form exonerating the petitioners he ought to have applied his mind and discussed the materials available on record which is apparently missing.

In these circumstances the original order of the



Magistrate taking cognizance is illegal and cannot be sustained.
The Revisional Court has similarly committed illegality by holding that the impugned order of the Magistrate was justified and legal, without considering the law.

This Court also finds substance in the argument of learned counsel for the petitioners that petitioners are being prosecuted maliciously because of the pending land dispute and in view of that the police has found this case false.

In these circumstances, this application is allowed.

Accordingly the order dated 27.10.2021 passed by Judicial Magistrate, 1st Class, Madhubani in Ladaniya P.S. Case No. 220 of 2020 and the order dated 29.08.2022 passed by learned Additional Sessions Judge, III, Madhubani in Criminal Revision No. 254 of 2021 are hereby quashed, **so far as the petitioners are concerned.**

(Sandeep Kumar, J)

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