

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22034 of 2024

In
CRIMINAL MISCELLANEOUS No.9669 of 2018

Arising Out of PS. Case No.-126 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

=====

Smt. Kusum Devi W/o- Bholi Choudhary Moh- Mahatma Gandhi Nagar
Patna Po- Housing Colony, Bahadurpur Ps- Agam Kuan Dist- Patna, Moh-
Lakhibagh Road- 4, Po Ps- Masaurhi Dist- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Krishna Kumar Choudhary son of Late Baishakhi Choudhary Moh-
Mahatma Gandhi Nagar Patna Po- Housing Colony Bahadurpur Ps-
Agamkuan Dist- Patna

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Dudhnath Singh
For the Opposite Party/s : Mr. Chandra Bhushan Prasad

=====

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 20-04-2024 1. Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The learned counsel for the petitioner submits that
the instant restoration application has been filed seeking
restoration of Cr. Misc. No. 9669/2018, which stood dismissed
for non-prosecution by an order dated 04.01.2024. It is next
submitted that Cr. Misc. No.9669/2018 was filed challenging
the order dated 16.11.2017 passed by the learned Judicial
Magistrate 1st Class, Massaurhi, Patna in Complaint Case
No.126© of 2016, whereby the discharge application filed on



behalf of the O.P. No.2-accused persons was allowed by the aforesaid order dated 16.11.2017 on the ground that sanction report has not been furnished by the complainant despite order dated 20.04.2017. The learned counsel next submits that the application seeking discharge was filed on behalf of the O.P. No.2 but then all the accused persons were discharged by the order dated 16.11.2017. It is further submitted that if the complainant was not able to produce the sanction order before the learned trial court, in compliance of the order dated 20.04.2017, whether the same warranted allowing the discharge application of all the accused persons, when only O.P. No.2 and accused no.8 are government servants.

3. The learned APP Mr. Chandra Bhushan Prasad vehemently opposes the restoration application and submits that no useful purpose would be served by restoring Cr. Misc. No.9669/2018 to its original file, as from perusal of the order impugned, it would manifest that all the accused persons have been discharged by order dated 16.11.2017 but then they have not been impleaded as O.Ps. in Cr. Misc. No.9669/2018, when they were necessary parties to the proceeding. It is further submitted that from perusal of the order dated 16.11.2017, it would also manifest that the learned trial court had taken note of



the fact that the complainant had challenged the order dated 20.04.2017 before this court by filing a Criminal Miscellaneous petition. It is next submitted that from perusal of para-6 of Cr. Misc. No.9669/2018, it would manifest that the said case was Cr. Misc. No.10495/2017. It is thus submitted that in absence of necessary party in the original quashing application and also the fact that Cr. Misc. No.10495/2017 is pending adjudication, no useful purpose would be served by restoring Cr. Misc. No.9669/2018 to its original file.

4. At this stage, the learned counsel appearing on behalf of the petitioner submits that the said Cr. Misc. No.10495/2017, by which, order dated 20.04.2017 was challenged, also stood dismissed for non-prosecution but then the same could not be pleaded, as the said case was dismissed for non-prosecution about 2-3 months back.

5. The learned APP thus based on submission of the learned counsel appearing on behalf of the petitioner submits that the submission in itself makes the case frivolous for the reason that on one hand the complainant had challenged the order dated 20.04.2017 in Cr. Misc. No.10495/2017 and thereafter left the case unattended, on account of which the case was dismissed for non-prosecution and thereafter no application



was filed for restoring the said criminal miscellaneous and when the order dated 16.11.2017 was passed, taking into consideration the fact that the complainant did not comply with the direction of the learned trial court dated 20.04.2017, the instant quashing application was filed, which also stood dismissed for non-prosecution, which amply demonstrates that the complainant is contesting litigation at leisure.

6. Taking into consideration the submission made by the learned APP and the fact that necessary parties have not been impleaded in the original quashing application, the court is not inclined to allow the restoration application.

7. Accordingly, the present restoration application is dismissed.

(Satyavrat Verma, J)

amit/-

U		T	
---	--	---	--

