

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55005 of 2015

Arising Out of PS. Case No.-415 Year-2013 Thana- BIHAR District- Nalanda

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1. Jitendra Kumar son of late Ayodhya Prasad resident of Mohalla - Mali Khandak, Amber, Bihar Sharif, P.S. Bihar Sharif, District - Nalanda.
 2. Mithilesh Prasad @ Mithilesh Kumar son of Sri Jagdev Prasad resident of village - Gausnagar, P.S. Sarmera, District - Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Amrendra Kumar Munna son of late Nand Kishore Prasad resident of village - Majidpur, P.S. Manpur, District - Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Krishna Prasad Singh, Sr. Advocate
		Mr. Raj Nandan Prasad, Advocate
For the Opposite Party/s	:	Mr. Jharkhandi Upadhyaya, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

3 08-01-2024 The present petition under Section 482 Cr.PC. has been preferred by the petitioners against the impugned order dated 09.01.2015 passed by Ld. Additional Sessions Judge 6th Nalanda in Criminal Revision No. 225 of 2014 and order dated 16.02.2015 passed by Ld. Chief Judicial Magistrate, Nalanda in G.R. No. 4295 of 2013, corresponding to Trial No. 4993 of 2013 arising out of Bihar Sharif P.S. Case No. 415 of 2013.

2. The relevant facts as emerging from the record are that Bihar Sharif P.S. Case No. 415 of 2013 was lodged against



four accused persons including the petitioners herein for offence punishable under Sections 341, 323, 504, 307, 379 read with Section 34 IPC. However, after investigation, the case was not found true against the petitioner no. 1, namely, Jitendra Kumar and co-accused Shashi Bhusan Kumar and Bodyguard. However, case was found true against the petitioner no. 2, namely, Mithilesh Prasad @ Mithilesh Kumar and hence, exonerating the petitioner no. 1 – Jitendra Kumar, co-accused Mithilesh Prasad @ Mithilesh Kumar and Bodyguard, charge-sheet was submitted only against petitioner no. 2 - Mithilesh Prasad @ Mithilesh Kumar for offence punishable under Sections 341, 323 and 504 read with Section 34 IPC. Hence, the impugned order dated 28.05.2014/29.05.2014 was passed by Ld. Chief Judicial Magistrate taking cognizance of offence punishable under Sections 341, 323 and 504 read with Section 34 IPC against the petitioner no. 2 - Mithilesh Prasad @ Mithilesh Kumar only. Subsequently, informant preferred Cr. Revision bearing no. 225 of 2014, wherein Ld. Revisional Court, by the impugned order dated 09.01.2015, observed that the accused had been exonerated by the police wrongly and hence, he sets aside the order dated 28.05.2014/29.05.2014 referring to case diary and directed Ld. Chief Judicial



Magistrate to pass fresh order. Subsequently, in pursuance to the revisional order, Ld. Chief Judicial Magistrate passed the impugned order dated 16.02.2015, whereby cognizance has been taken against all the four accused persons including the petitioners and other co-accused Shashi Bhusan Kumar and Bodyguard for offence punishable under Sections 341, 323, 504, 307 & 379 read with Section 34 IPC. Hence, the petitioners, being aggrieved, have preferred the present petition for quashing the impugned orders.

3. Heard Ld. Counsel for the petitioners and Ld. APP for the State. However, no body appeared on behalf of O.P. No. 2 despite proper service of notice.

4. Learned counsel for the petitioners submits that impugned order dated 09.01.2015 has been passed by Ld. Revisional Court to the prejudice of petitioner no. 1 – Jitendra Kumar without affording any opportunity of hearing to him. Hence, the impugned order is not sustainable in the eye of law. He further submits that neither the petitioner no. 1, nor other accused, who were exonerated by the police after investigation, were impleaded, as Respondents in the Criminal Revision, nor any notice was issued to them by Ld. Revisional Court before passing the impugned order, whereas the mandate of principles



of natural justice is that no prejudicial order can be passed against anybody without hearing him. He also refers to Section 401(2) Cr.PC. which provides that no order under this Section shall be made to the prejudice of the accused or other persons unless he has had opportunity of being heard, either personally or by pleader in his own defence.

5. Ld. APP for the State, however, defends the impugned orders. He further points out that petitioner no. 2 – Mithilesh Prasad @ Mithilesh Kumar had no occasion to impugn the revisional order dated 09.01.2015 or impugned order dated 16.02.2015, because by the original cognizance order dated 28.05.2014/29.05.2014, cognizance of offence was taken against him and hence, the impugned orders are no way prejudicial to him and he has no locus to challenge the impugned orders. In case, he was aggrieved by the order dated 28.05.2014/29.05.2014 passed by Ld. Magistrate taking cognizance against him, he should have preferred Criminal Revision against the order.

6. I considered the submissions advanced by both the parties and perused the relevant materials on record.

7. Before I consider the rival 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.”

(Emphasis supplied)

8. 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.



9. Hon'ble Supreme Court in *Manharibhai Muljibhai Kakadi Vs. Shaileshbhai Muljibhai Patel [(2012) 10 SCC 517]* 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.

10. 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.

11. 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.

12. In ***Bhagirath v. Kana Ram & Another (2001 Cri.L.J 122)***, also, Hon'ble Supreme Court had occasion to consider the similar facts and circumstances wherein Ld. Magistrate had dismissed the criminal complaint filed against the accused for offence punishable under Section 307 IPC. However, revisional court set aside the dismissal of the complaint and directed the Magistrate to take cognizance of the offence punishable under Section 307 IPC without giving opportunity of hearing to the accused. Hence, Hon'ble Supreme Court had set aside the order of the revisional court and remitted



the matter to the revisional court for disposal after giving opportunity of hearing to the parties concerned.

13. Coming to the case at hand, I find that the petitioner no. 2, namely Mithilesh Prasad @ Mithilesh Kumar has no occasion to challenge the impugned orders, because he has not suffered any prejudice by the impugned orders. He was already charge-sheeted by the police for offence punishable under Sections 341, 323 and 504 read with Section 34 IPC and Ld. Chief Judicial Magistrate had already taken cognizance against him exonerating the petitioner no. 1 and other co-accused. In case, he has any grievance against this cognizance order against him, he can pursue his remedy as per law, but he has no locus to challenge the impugned orders. It is only those accused persons, who were exonerated by the police and even Ld. Chief Judicial Magistrate had accepted the closure of the case against them, have occasion to challenge the impugned orders, because without hearing them, including the petitioner no. 1, the Revisional Court has passed prejudicial order and in pursuance of the revisional order, Ld. Magistrate has passed impugned order dated 16.02.2015, whereby fresh cognizance order has been passed, wherein cognizance has been taken not only against petitioner no. 2 – Mithilesh Prasad @ Mithilesh



Kumar, but even against petitioner no. 1 and other co-accused, who were initially found innocent by the police and Ld. Chief Judicial Magistrate.

14. Considering the aforesaid facts and circumstances, impugned orders dated 16.02.2015 & 09.01.2015 are not sustainable in the eye of law against the petitioner no. 1 – Jitendra Kumar. Hence, the same are set aside. Criminal Revision No. 225 of 2014 is restored to its file for hearing and disposal in Ld. Sessions Court on merit after issuing notice to the petitioner no. 1 herein and other co-accused against whom cognizance was not taken.

15. The proceedings before Ld. Chief Judicial Magistrate will remain stayed against the accused persons, namely, Jitendra Kumar, Shashi Bhusan Kumar and Bodyguard of Jitendra Kumar till order of Revisional Court in the aforesaid Criminal Revision No. 225 of 2014. However, the cognizance taken against petitioner no. 2 – Mithilesh Prasad @ Mithilesh Kumar still stands valid for want of being challenged in higher Court. Hence, Trial Court can proceed against the petitioner no. 2 – Mithilesh Kumar @ Mithilesh Prasad.

16. Accordingly, the present petition is allowed in part.



17. 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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