

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29686 of 2016

Arising Out of PS. Case No.-15150 Year-2014 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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1. MULLA MAHMOOD YAHYA @ MULLA MAHMOOD AHMAD YAHYA @ MULLA MOHAMMAD AHMAD YAHYA and ANR son of Late Mulla Hakim Maulvi Yahya, resident of Village and P.O. Lakhminiya, P.S. Anchal, Pargana, Subdivision and Sub Registry Ballia, District Begusarai.
 2. Mahmood Eqbal @ Eqbal Rahman @ Md. Eqbal son of Late Julu Rahman resident of Village Chhoti Balia, Upar Tola, P.S. Balia, District Begusarai.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Manoj Devi wife of Kailash Prasad, resident of Village Chhoti Balia, Gachhi Tola, P.s. Balia, District- Begusarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur
	:	Mr. Md. Imteyaz Ahmad
For the Opposite Party/s	:	Mr. Uday Pratap Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

10 08-01-2024 The present petition under Section 482 CrPC has been preferred by the petitioners against the impugned order dated 07.07.2015 passed by Ld. Additional Sessions Judge, Begusarai in Cr. Revision No. 171/2015 and order dated 10.09.2015 passed by Sri Rakesh Kumar, Ld. Judicial Magistrate, 2nd Class, Begusarai.

2. The relevant facts as emerging from the record are that Criminal Complaint bearing No. 15150©/2014 was filed by OP No.2, Manoj Devi against petitioners for offence punishable



under Sections 420, 467, 468 read with 34 IPC in the court of Ld. Chief Judicial Magistrate, Begusarai.

3. It further transpires that Ld. Chief Judicial Magistrate after examining one witness, transferred the complaint under Section 192 CrPC to the court of Ld. Judicial Magistrate, 2nd Class, Begusarai for enquiry and trial. In course of the enquiry, Ld. Judicial Magistrate examined four witnesses and found *prima facie* case under Section 417 IPC against the petitioners, and, hence, he directed issuance of summons against them. The complainant, who is OP No. 2, Manoj Devi, being aggrieved by the order, preferred Cr. Revision bearing 171/2015 which was allowed by the Ld. Additional Sessions Judge, Begusarai by the impugned order dated 07.07.2015 finding that *prima facie* case is made out against the accused, who are petitioners herein, under Sections 420, 406, 468 IPC. Hence, Ld. Additional Sessions Judge set aside the order dated 16.02.2015 passed by Ld. Judicial Magistrate 2nd Class and directed him to make further enquiry and pass a fresh order.

4. In compliance of the order of Ld. Revisional Court, Sri. Rakesh Kumar, Ld. Judicial Magistrate 2nd Class, Begusarai passed impugned order dated 10.09.2015 in Complaint Case No. 15150©/2014 finding *prima facie* case



under Section 420, 406 and 468 of the IPC against the petitioners and directed issuance of summons against them.

5. Ld. Counsel for the petitioners submits that the impugned order has been passed against the statutory provisions of Section 401(2) CrPC, as per which, in the aforesaid situation, the accused persons have right to hearing and revisional court cannot dispose of criminal revision without giving an opportunity of hearing to the accused persons. The accused petitioners were not impleaded as Opposite Party in the criminal revision petition and hence no notice was issued to them and they were deprived of their right to hearing.

6. He also relies upon *Manharibhai Muljibhai Kakadi Vs. Shaileshbhai Muljibhai Patel [(2012) 10 SCC 517]*.

7. However, Ld. APP for the State and Ld. Counsel for OP No.2 defend the impugned orders submitting that there is no illegality or impropriety in the impugned orders.

8. Considered the submissions advanced by the parties and perused the relevant materials on record.

9. 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)

10. 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.



11. Hon'ble Supreme Court in ***Manharibhai Muljibhai Kakadia case (supra)*** 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.

12. 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.

13. 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.

14. 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.

15. Coming to the case at hand, I find that initially, Ld. Magistrate had taken cognizance of only offence punishable under Section 417 IPC. However, on revision petition of the complainant, Ld. Revisional Court found *prima facie* case under Sections 420, 467 and 468 r/w Section 34 IPC which are graver offences than that under Section 417 IPC and in pursuance to the order of Ld. Revisional Court, Ld. Magistrate has taken cognizance of offences punishable under Sections 420, 467 and 468 r/w Section 34 IPC. As such, Ld. Revisional Court has allowed the Revision Petition to the prejudice of the Accused/Petitioners without affording any opportunity of hearing to them.

16. Considering the aforesaid facts and circumstances, the impugned orders dated 07.07.2015 passed by Ld. Additional Sessions Judge, Begusarai in Cr. Revision No. 171/2015 and order dated 10.09.2015 passed by Sri Rakesh Kumar, Ld. Judicial Magistrate 2nd Class, Begusarai are not sustainable in the eye of law, hence, the same are set aside and Criminal Revision No. 171 of 2015 is restored to its file for hearing and disposal by the Sessions Court on merits after



notice to the petitioners herein. The proceeding before Sri Rakesh Kumar, Ld. Judicial Magistrate, 2nd Class, Begusarai, in Criminal Complaint bearing No. 15150©/2014 will remain stayed till order of revisional court in the aforesaid Cr. Revision No. 171/2015.

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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