

IN THE HIGH COURT of JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77366 of 2019

Arising Out of PS. Case No.-2693 Year-2017 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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1. Motaib Miyan Son of Late Khusi Mian Resident of Village - Makhatan Parsauni, P.S.- Kateya, District- Gopalganj
 2. Haffijulla Mautab Mansuri @ Hafijullah Mian Son of Motaib Mian Resident of Village - Makhatan Parsauni, P.S.- Kateya, District- Gopalganj
 3. Ainul Nesha @ Anulnesha Wife of Noor Alam Resident of Village - Makhatan Parsauni, P.S.- Kateya, District- Gopalganj
 4. Dinesh Chandra Mishra Son of Late Nathuni Mishra Resident of Amahi Mishra, P.S.- Kateya, District- Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Ibrahim Ansari Son of Late Kurban Ansari Resident of Village - Makhatan Parsauni, P.S.- Kateya, District- Gopalganj

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prince Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Madhuri Lata, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 28-02-2024

1. Heard learned counsel appearing for the petitioners, learned counsel appearing for the opposite party no. 2 and learned APP appearing for the State.

2. The present application is being filed for quashing the order dated 06.06.2018 passed in Cr. Revision No. 648 of 2018 by the Court of learned District and Sessions Judge, Gopalganj, whereby and whereunder, the learned trial Court has been pleased to set aside the order dated 20.04.18 passed in



Complaint Case No.2693/2017 & Trial No.2326/18 by the learned Additional Chief Judicial Magistrate- XV, Gopalganj in cyclostyle manner by stating inter-alia that "Since the matter is under the supervision and control of C.O. Kateya and it is incumbent upon C.O. Kateya to take into serious notice and he being custodian of Reg. II suppose to be recommended to launch F.I.R. against erring person, if any, found after conducting short enquiry with intimation to court forthwith, if any manipulation has been made therein are entering of Reg. II with respect to the purchase land accordingly, narrated by the revisionist. Therefore it is hereby "ordered" that the criminal revision is hereby disposed of as stated above. Let a copy of the order be sent to C.O. concern for the needful as stated above without further delay." The Petitioners also challenges the Letter No.1029 dated 13.07.19, whereby and whereunder, Petitioner No.4 has been issued show cause as to why FIR be not instituted against him for tampering with the records of Jamabandi No.35.

3. The brief facts of the case is that a complaint was filed by Opposite Party No. 2 before the court of learned Additional Chief Judicial Magistrate-XV, Gopalganj alleging inter-alia that petitioners have prepared document with regard their purchase land. It was also alleged that petitioners have also



manipulated the entries in the Register -II.

4. Learned counsel Mr. Prince Kumar Mishra appearing for the petitioners submitted that after considering the aforesaid complain (Annexure -P/1) and taking note of statements of enquiry witnesses, it was dismissed by Additional Chief Judicial Magistrate-XV, Gopalganj under Section 203 of the Code of Criminal Procedure (in short “Cr.P.C.”) vide order dated 20.04.2018. It is pointed out that against said order O.P. No. 2 preferred a revision petition before the Court of Sessions Judge, where without hearing the petitioners, the learned Sessions Judge directed Circle Officer (C.O.) of Kateya to lodge FIR against petitioners, which is the impugned order. It is submitted that the order without giving any opportunity of hearing to the petitioner, is not permissible under the law. In support of his submissions, learned counsel referred the legal report of Hon’ble Supreme Court as reported in the matter of ***Manharibhai Muljibhai Kakadia and Another vs. Shaileshbhai Mohanbhai Patel and Others*** reported in (2012) 10 SCC 517, where Para- 48 and 53 pressed specifically.

5. Learned counsel also relied upon the report of Hon’ble Supreme Court in the matter of ***Bal Manohar Jalan vs. Sunil Paswan and Another*** as reported in (2014) 9 SCC 640.



6. While concluding the argument, it is submitted by learned counsel that the petitioners came to know about proceedings when C.O. Kateya issued them notice as why not FIR be lodged against them in terms of impugned order.

7. Learned counsel appearing for the O.P. No.2, while opposing the application submitted that the impugned order cannot be said any adverse order against petitioners, rather it is the direction to an executive to take action in terms of law after short preliminary enquiry and as such same is not hit by the legal reports as referred of *Manharibhai Muljibhai Kakadia (supra)*.

8. Taking counter note of the submissions, as advanced by learned counsel appearing for the O.P. No.2, learned counsel appearing for the petitioners submitted that the impugned order after disposal was forwarded to C.O. concerned for the needful and only in furtherance of that, notice was issued to petitioners.

9. It is also submitted by learned counsel appearing for the petitioners that a proceeding was conducted before D.C.L.R., Hathua, Gopalganj, which was instituted by O.P. No. 2 against petitioners claiming thereof that Jamabandi of disputed land was wrongfully created in favour of petitioners, which



upon verification of revenue record found incorrect and the petition of O.P. No. 2 before D.C.L.R., Hathua, Gopalganj was rejected. It is further pointed out that the order passed by D.C.L.R., Hathua, Gopalganj is available as Annexure- P/4. Learned counsel further pointed out that the said order dated 25.06.2019 was never challenged by O.P. No. 2 before appellate authority or any court of law.

10. For better understanding of the fact out of submissions, it would be appropriate to quote the relevant part of the impugned order i.e., Cr. Revision No. 648 of 2018, which is as under:-

Therefore, it is hereby

"ORDERED"

that the Cri. Revision is hereby disposed of as stated above. Let a copy of order be sent to C.O.concerned for the needful as stated above without further delay.

*District and Sessions Judge,
Gopalganj.*

06-06-2018

11. It would be appropriate to quote para 48 and 53 of *Manharibhai Muljibhai Kakadia (supra)*, which is as under:-

"In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on



completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203— although it is at preliminary stage — nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get right of hearing before revisional court although such order was passed without their participation. The right given to “accused” or “the other person” under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate



and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.”

12. In view of aforesaid factual and legal submissions and by taking note of fact as an adverse order was passed through impugned order against petitioners without giving an opportunity of hearing, which appears not permissible in view of ***Manharibhai Muljibhai Kakadia (supra)***.

13. Accordingly, the application stands allowed.

14. Hence, the impugned order dated 06.06.2018 passed in Criminal Revision No. 648 of 2018, by the learned District & Sessions Judge, Gopalganj is hereby, quashed and set aside with all its consequential proceedings *qua* petitioners.

15. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	NA
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