

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1717 of 2023

Arising Out of PS. Case No.-210 Year-2009 Thana- SC/ST District- Vaishali

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1. RAM KRIPAL RAY Son of Late Ramswarup Ray The then Mukhiya, Gram Panchayat Manikpur Mushaharnia, PS- Parihar, Dist- Sitamarhi
 2. Raj Kishore Singh Son of late Ramashrey Singh R/V- Old Circus Gausala, P.O- Punaura, PS and Dist- Sitamarhi the then Panchayat Sachiv, Gram Panchayat Manikpur Mushaharnia, PS- Parihar, Dist- Sitamarhi
 3. Md. Taufir Ahmad Son of Md. Jahir Ahmad R/V- Andauli, Ward no. 13, PS- Parihar Dist- Sitamarhi

... .. Appellant/s

Versus

1. The State of Bihar
2. Prabhat Paswan Son of Tetar Paswan R/V- Manikpur Mushaharnia, PS- Parihar Dist- Sitamarhi

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jiwan Prakash Sinha, Advocate
For the Respondent/s : Mr. Binay Krishna, Spl. PP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

12 04-03-2025

Heard the parties.

2. The present appeal has been preferred:-

“for quashing of the order dated 01.07.2011 passed by the learned Chief Judicial Magistrate, Sitamarhi, by which the learned court below has taken the cognizance for the offence 341, 323, 504 of I.P.C. and section 3(i)(x) of SC/ST (Prevention of Atrocities) Act against the accused persons the appellants in SC/ST (Vaishali) P.S. Case No. 210/09, corresponding to Case No. 190/2017 (CIS) No. 247/2018,



*pending in the court of 1st Additional Sessions
Judge-cum-Special Judge, Sitamarhi.”*

3. As per the F.I.R., the informant alleged that the accused persons including Ram Kripal Ray (Mukhiya) of the said village were indulging in financial irregularity of the government fund while the informant's wife being a member of the Panchayat Samiti was objecting to it. She had given written complaint to the Block Development Officer as also the District Magistrate, Sitamarhi that in the 'Indira Awas Scheme' the Mukhiya is taking Rs.5,000/- illegally from the poor people.

4. Allegation is that on the fateful day, when the couple was returning home, the appellants intercepted them forcing them to take the petition submitted before the Government Officials back. Upon refusal, the allegation is that they were infuriated, took caste name (recorded in the F.I.R) and tried to outrage the modesty of the lady as also assaulted the informant. Allegation against Taufir Ahmad is of spitting on informant's face. This led to the F.I.R.

5. The Police investigated the matter, found the case untrue and accordingly submitted **final form** on **22.03.2011**. The court concerned took up the matter on **01.07.2011** and having gone through the different paragraphs of the case diary,



found prima facie case being made out against the accused persons. Accordingly, it took cognizance with a direction to the office to take necessary steps for issuance of summons.

6. From the record which is now in the Court, pursuant to the order of the coordinate Bench, it seems that summons were issued to the appellants on 08.07.2011. The appellants evaded summons which followed issuance of bailable warrant on 12.07.2012. The appellant evaded even the bailable warrants. This despite the fact that they were known figure in the society and one of them is government employee. Further, pursuant to the order dated 28.06.2013, non-bailable warrants issued against the accused. But the story remained the same. It could not be served upon them. The role of bench clerk in this regard is also questionable. Finally, process were issued on 06.05.2014. It remain unserved for the next eight years. This reflects the role of the Police and influence of the appellants and how it found the case to be untrue. It has to be noted that the appellant no.1 is/was the 'Mukhiya' while one of the accused is/was the 'Panchayat Secretary'.

7. The court in that background, after recording that the accused persons are deliberately evading appearance, vide an order dated 27.01.2023 fixed the matter on 30.01.2023 for



recording the evidence under section 299 of the Cr.P.C. Ten years later and after the said order dated 27.01.2023, the appellant immediately came to know about the order/cognizance that was taken in the year 2011 and accordingly, preferred the present appeal challenging the said cognizance order dated 01.07.2011.

8. Learned counsel for the appellants submit that after the Police submitted final form, they were assured that the case has been closed and as such never came to know about the summon/bailable warrant/non-bailable warrant as also the processes under section 82/83 of the Cr.P.C. and thus it took twelve years to approach Patna High Court.

9. Learned APP on the other hand opposes the prayer submitting that a perusal of the series of the orders beginning with the cognizance order dated 01.07.2011 till it was adjourned for taking evidence under section 299 of the Cr.P.C. on 27.01.2023, it seems with complete connivance of the local bench clerk and the Police, the accused persons/appellant successfully evaded their appearance as a result whereof the process under sections 82 or 83 of the Cr.P.C. could not be executed. While the court was lethargic, the Police was in connivance.



10. He submits that it can be seen from the fact that although the appellants claim that they remained assured after the final form was submitted, the moment the court moved forward for recording evidence under section 299 of the Cr.P.C. they knocked the doors of this Court. In that background, the appeal is fit to be dismissed.

11. Having heard the parties and perusing the record, the submission put forward by the learned APP is/are quite convincing. It is to be noted that the appellant no.1 is/was the 'Mukhiya' while the another appellant is/was 'Panchayat Secretary'. Though they had knowledge about submission of final form but remained completely unaware of the cognizance order, as they wanted the Court to believe. In between from the year 2011 to 2023, the court concerned resorted to summons, bailable warrants, non-bailable warrants as also processes under section 82/83 of the Cr.P.C. from time to time but they successfully managed but failed to make them appear.

12. No reason has been given by the Police why despite the specific allegation made against the accused persons that the accused wanted withdrawal of petitions by the informant submitted before the District Magistrate and Block Development Officer and upon refusal to do so, the



assault/abuse/spitting on the face took place, they chose to submit the final form.

13. It is further to be noted that for twelve years, the appellant's case is that they had no knowledge about the cognizance order despite process under section 82 or 83 of the Cr.P.C. issued against them but the moment the court concerned passed the order dated 27.01.2023 by which it moved forward for recording evidence under section 299 of the Cr.P.C., the appellants came to know about it and moved before this Court.

14. More than one and half decade has lapsed (after the FIR was lodged) for want of their appearance before the court. It is high time, they appear and put forward their view point/case/innocence by filing appropriate petition before the Trial Court so that the matter is taken to its logical conclusion at an earliest.

15. No case of interference is required. Accordingly, the appeal stands dismissed.

16. The office shall take immediate steps to return the Trial Court Records to the court of learned Chief Judicial Magistrate, Sitamarhi.

17. Let a copy of the order be sent to the learned Principal District and Sessions Judge, Sitamarhi for his/her



perusal and needful as also the Superintendent of Police, Sitamarhi for their perusal and needful as non-execution of summons, bailable as well as non-bailable warrants and process under section 82/83 of the Cr.P.C. for decade is serious matter and appropriate remedial measure is/are need of the hour.

(Rajiv Roy, J)

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