

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39857 of 2016

Arising Out of PS. Case No.-50 Year-2015 Thana- DARIHAT District- Rohtas

-
1. Bhuti Sah @ Santosh Kumar Sah @ Mutti Sah and Anr Son of Sri Awadh Sah
 2. Sujeet Sah Son of Bhuti Sah @ Santosh Kumar Sah Both are the resident of Village- Ayerkotha, Police Station- Darihat, District- Rohtas.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Rajendra Prasad Singh Son of Late Taluk Raj Singh Resident of Village- Khudawa, P.S.- Darihat, District- Rohtas.

... .. Opposite Party/s

Appearance :

For the Petitioners	:	Mr. Sudama Singh, Adv. Mr. Dhaneshwar Prasad Gupta
For the State	:	Mr. Suresh Prasad Singh, APP
For the O.P. No.2	:	Mr. Mithilesh Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

7 30-01-2025 At the outset, it is submitted by the petitioners' counsel that despite staying the proceeding in connection with Darihat P.S. Case No. 50 of 2015 by the co-ordinate bench of this court vide order dated 24.05.2017, the learned trial court has proceeded ahead and thereafter, framed charges upon the petitioners which is completely in violation of that order.

2. Considering the aforesaid submission, let a report be called for from the concerned trial court regarding the aforesaid fact and put up this matter after five weeks after receipt of the same.



I.A. No. 01 of 2023

3. By this Interlocutory Application, the petitioners have prayed to quash the order dated 28.04.2023 passed by the learned Additional Sessions Judge-XVIII, Rohtas at Sasaram in Sessions Trial No. 435 of 2016, arising out of Darihat P.S. Case No. 50 of 2015, by which charges have been framed upon the petitioners and also to quash the entire criminal proceeding having arisen against the petitioners in connection with the Darihat P.S. Case No. 50 of 2015.

4. As the relief which has been sought for by the petitioners in the instant I.A. is completely different and the same cannot be decided together with the relief which has been sought by the petitioners in the main petition, so, the present I.A. is hereby disposed of with a liberty to the petitioners to challenge the order dated 28.04.2023 by way of separate Misc. petition.

5. Heard Mr. Sudama Singh, learned counsel for the petitioners, Mr. Suresh Prasad Singh, learned APP for the State and Mr. Mithilesh Kumar Singh, learned counsel for the O.P. No.2.

6. The instant petition has been filed under section 482 of the Code of Criminal Procedure (in short Cr.P.C.)



challenging the order dated 01.03.2016 passed by the learned Sessions Judge, Rohtas at Sasaram in Cr. Rev. No. 372 of 2015 by which the order dated 13.06.2016 passed by the learned SDJM, Dehri-on-Sone in connection with Darihat P.S. Case No. 50 of 2015 taking cognizance of the offences punishable under sections 341, 323, 379, 504 and 307 read with section 34 of the IPC has been set aside.

7. Learned counsel for the petitioners submits that both the petitioners are accused in Darihat P.S. Case No. 50 of 2015 and O.P. No.2 is the informant in the said case, after completion of the investigation, the police submitted charge-sheet and thereafter, the concerned Magistrate took cognizance of the offences punishable under sections 341, 323, 379, 504 and 307 read with section 34 of the IPC and that cognizance order was challenged by the informant by filing Cr. Rev. No. 372 of 2015 and surprisingly, the petitioners were not made a party in that revision petition which was completely in violation of the provision of sub-section (2) of Section 401 of the Cr.P.C. which clearly says that no order 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. Though, the said provision relates to the power of the



High Court while exercising the revisional power but as per Section 399 of the Cr.P.C., the Sessions Judge has the same powers in revisional jurisdiction which are available to the High Court under sub-section (1) of Section 401 of the Cr.P.C. and moreover, in view of the principle of natural justice, the petitioners ought to have been given an opportunity of being heard as any order by a revisional court while examining the legality and propriety of a cognizance order can be deemed to have affected the accused and admittedly, at that time both the petitioners were accused. It is further submitted that there are several other grounds to show the non application of judicial mind by the revisional court while setting aside the order of cognizance.

8. Although, the learned counsel appearing for the O.P. No.2 has opposed this petition but fairly accepted that petitioners were not heard by the revisional court as they were not made a party in the Revision Petition No. 372 of 2015.

9. Considering the aforesaid ground taken by the petitioners' counsel which completely shows the violation of the principle of natural justice as at the time of passing the order impugned, admittedly, the petitioners were accused and they must have been given an opportunity of hearing before passing



an order on the petition of the O.P. No.2, so, merely considering this aspect the order impugned is hereby set aside and the revisional court is directed to pass afresh order on merit without being prejudiced by this order after giving sufficient opportunity to the petitioners as well as the O.P. No. 2 within two months from the date of receipt of this order's copy.

10. In the result, the instant petition stands allowed.

(Shailendra Singh, J)

BKS/-

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

