

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.994 of 2024

Arising Out of PS. Case No.- Year-0 Thana- District- West Champaran

1. Chotelal Mukhiya Son of Ganpat Mukhiya Resident of Village - Pujainiya, P.S. - Manpur, District - West Champaran, Bihar
2. Faudar Mukhiya Son of Birendra Mukhiya Resident of Village - Pujainiya, P.S. - Manpur, District - West Champaran, Bihar
3. Suresh Mahto Son of Late Birchha Mukhiya Resident of Village - Pujainiya, P.S. - Manpur, District - West Champaran, Bihar
4. Tuntun Parit @ Tuntun Pandit Son of Shankar Parit Resident of Village - Pujainiya, P.S. - Manpur, District - West Champaran, Bihar
5. Mochan Mahto @ Motichand Mahto Son of Late Mahant Mahto Resident of Village - Pujainiya, P.S. - Manpur, District - West Champaran, Bihar
6. Bhoj Mukhiya Son of Arjun Mukhiya Resident of Village - Pujainiya, P.S. - Manpur, District - West Champaran, Bihar
7. Harindra Mukhiya Son of Late Jagdish Mukhiya Resident of Village - Pujainiya, P.S. - Manpur, District - West Champaran, Bihar
8. Harihar Mukhiya Son of Late Jagdish Mukhiya Resident of Village - Pujainiya, P.S. - Manpur, District - West Champaran, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dafadar Mian Son of Haider Mian Resident of Village - Purainiya, P.S. - Manpur, District - West Champaran, Bihar
3. Ramakant Mukhiya Son of Late Hanuman Mukhiya Resident of Village - Purainiya, P.S. - Manpur, District - West Champaran, Bihar
4. Rajesh Mukhiya Son of Late Rameshray Mukhiya Resident of Village - Purainiya, P.S. - Manpur, District - West Champaran, Bihar
5. Bhulan Mukhiya Son of Nathuni Mukhiya Resident of Village - Purainiya, P.S. - Manpur, District - West Champaran, Bihar
6. Radha Mukhiya Son of Jagat Mukhiya Resident of Village - Purainiya, P.S. - Manpur, District - West Champaran, Bihar
7. Ramjit Mukhiya Son of Saryug Mukhiya Resident of Village - Purainiya, P.S. - Manpur, District - West Champaran, Bihar
8. Sukhi Mukhiya Son of Kanti Mukhiya Resident of Village - Purainiya, P.S. - Manpur, District - West Champaran, Bihar
9. Nathuni Mukhiya Son of Late Munni Mukhiya Resident of Village - Purainiya, P.S. - Manpur, District - West Champaran, Bihar
10. Kisun Mukhiya Son of Late Hira Mukhiya Resident of Village - Purainiya, P.S. - Manpur, District - West Champaran, Bihar
11. Bangali Mukhiya Son of Late Hira Mukhiya Resident of Village - Purainiya, P.S. - Manpur, District - West Champaran, Bihar

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Baxi S.R. P Sinha, Sr. Advocate
For the State : Smt. Asha Kumari, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 04-08-2025 I.A. No. 1 of 2025 is an application under Section 5 of the Limitation Act. It is submitted by the learned Senior Counsel for the petitioners that the petitioners filed an application under Section 145 of the CrPC before the Sub-Divisional Magistrate, Narkatiaganj. The said application under Section 145 of the CrPC was decided against the petitioners. The petitioners wrongly preferred an appeal before the learned Sessions Judge, West Champaran, Bettiah being Criminal Appeal No. 63 of 2022 against the order passed by the learned Sub-Divisional Magistrate, Narkatiyaganj upon the aforesaid application under Section 145 of the CrPC. The said appeal was rightly treated as a revision by the learned Sessions Judge and he disposed of the said revision *vide* impugned order dated 29th May, 2024. In view of the bar contained in Section 397(3) of the CrPC. The petitioners filed an application under Section 482 of the CrPC, assailing the order passed in revision by the learned Sessions Judge, West Champaran, Bettiah. The Stamp Reporter attached to this Court raised an objection that application under Section 482 of the CrPC is not maintainable against the order



passed in revision by the learned Sessions Judge. Thus, on the advice of the Stamp Reporter, the petitioners again converted the application to an application under Section 397(1) read with Section 401 of the CrPC. In the process, there was a delay of 61 days which the petitioners have prayed for condonation by filing an application under Section 125 of the CrPC.

2. Similar issue came up for consideration before the Hon'ble Supreme Court in ***Shakuntala Devi & Ors. vs Chamru Mahto & Anr.*** reported in ***AIR (2009) SC 2075***, the Hon'ble Supreme Court referring to its earlier decision in ***Laxmi Bai Patel vs Shyam Kumar Patel*** reported in ***JT 2002(3) SC 409*** held that the object of introduction of Sub-Section 3 of Section 397 was to prevent a second revision so as to avoid frivolous litigation, but at the same time, the door of the High Court to a litigant who had lost before the Sessions Judge was not completely closed and in special cases, the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain petition under Section 482 was not subject to the prohibition in sub-Section 3 of Section 397 and was capable of being invoked in appropriate cases. Thus, there is no complete bar under Section 397(3) debarring the High Court from entertaining an application under Section 482 of the CrPC.



3. Relying on the above-mentioned decisions passed by the Hon'ble Supreme Court, this Court finds that the petitioners have the right to challenge an order passed by the learned Sessions Judge in revision under the inherent power of the High Court. In order to give effect to any order under the court, or to prevent abuse of the process of any court or otherwise to secure ends of justice.

4. Thus, this Court finds that petitioners' initial application under Section 482 of the CrPC was correctly filed by them and the Stamp Reporter had no occasion to raise such objection, if there was any doubt, the department could have taken the opinion of the Court sending the case record under the heading "For Orders (On Office Notes)". Therefore, I hold that the application under Section 482 of the CrPC was maintainable and the instant revision be converted to an application under Section 482 of the CrPC.

5. If the application is converted to the application under Section 482 of the CrPC, the date of filing relates back to the date of initial filing and in that case, there would not have been any limitation which required condonation.

6. At the same time, I find that an application under Section 5 of the Limitation Act is not maintainable under the



facts and circumstances of the case because the petitioners continued with the proceeding *bona fide* before the High Court, but their petition was not entertained on the ground of lack of jurisdiction. Therefore, if any delay at all be caused, it is liable to be excluded under Section 12 read with Section 14 of the Limitation Act.

7. On conversion of the instant revision to an application under Section 482 of the CrPC, the department is directed to send the case record to the competent court having the roster, and the petitioners are given liberty to file an application for exclusion of time under Section 12 read with Section 14 of the Limitation Act, if there is any delay in filing the application under Section 482 of the CrPC. It is made clear that the date of filing of the application under Section 482 of the CrPC shall have to be construed from the initial date when the petitioners filed the application under Section 482 of the CrPC.

8. With the above order, both the interlocutory applications and the criminal revision is disposed of.

(Bibek Chaudhuri, J)

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