

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58226 of 2015

Arising Out of PS. Case No.- Year-1111 Thana- District-

Mustafa @ Md. Mustafa Son of Haji Asgar Ali, resident of Village- Durgapur,
P.O.- Sukhasan, P.S.- Barari O.P. Semapur, District- Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Jalauddin Son of Ayub Ali, resident of Village-Naya Tola Balughat, P.O.- Sukhasan, P.S.- Barari, District- Katihar.
3. Javed Ali Son of Latifur Rahman, Resident of Village- Balughat, P.O.- Sukhasan, P.S.- Barari, District- Katihar.
4. Makbool Son of Saijuddin, resident of Village- Sukhasan, P.O.- Sukhasan, P.S.- Barari, District- Katihar.
5. Mistar Son of Makbool, resident of Village- Sukhasan, P.O.- Sukhasan, P.S.- Barari, District- Katihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. M.N. Parbat, Sr. Advocate
		Mr. Praveen Prabhakar, Advocate
For the Opposite Party/s	:	Mr. Jitendra Kr. Roy No.1App

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 06-01-2026 Heard the learned Senior Counsel for the petitioner and the learned APP for the State. None has appeared on behalf of the opposite parties.

2. The present application has been filed for quashing the order dated 5.8.2015, passed by learned Additional District and Session Judge IIIrd, Katihar, in Criminal Revision Case No. 131 of 2014 (Mustafa Versus, Jalauddin and others) by which the learned Additional District and Session Judge IIIrd rejected the Criminal Revision case confirming the order dated



5.9.2013, passed by learned Sub-divisional Magistrate, Katihar, in Case No. 144 M of 2013 (Jalauddin Versus, Javed Ali and others), by which he converted proceeding under section 144 of code of criminal procedure in a proceeding under section 145 of code of criminal procedure.

3. The brief facts giving rise to the present application are that one late Dhandhari Sahani Son of late Budhram Sahani was married twice and had three sons from his first wife Koily Devi, namely, Charitar Sahani, Firangi Sahani and Mangal Sahani. Out of these three sons Mangal Sahani died unmarried, and Firangi Sahani died issueless leaving behind his wife Sudhiya Devi who also died in the year 2005. Charitar Sahani was married to one Jhunni Devi and both died leaving behind a son namely, Santlal Sahani from the wedlock. Similarly, said late Dhandhari Sahani had a son namely, Hare Kishun Sahani from his second wife namely, Fagui Devi, who was married to one Deoki Devi and both died leaving behind four daughters namely, Akshara Devi, Parbati Devi, Tatasan Devi and Surji Devi, who all are married. It is stated that disputed land covered under Khata no. 28, plot no. 3560 having area 59 decimal 7.1/2 kari (wrongly mentioned as area 60 decimal) was purchased land of late Sudhiya Devi wife of late



Firangi Sahani and after her death, it came in possession of Santlal Sahani. The present petitioner purchased the said land from said Santlal Sahani *vide* registered Sale Deed No. 14050 dated 16.7.2012 for valid consideration of rupees 1,85,000/- and came in possession of the same. The name of petitioner has been mutated over the land in question in accordance with law in government register and having found his possession over the same and after payment of rent, he has been issued rent receipt also.

4. In the year 2012 *vide* non F.I.R. No. 22 of 2012 dated 11.11.2012 submitted by the police before learned Sub-divisional Magistrate, Katihar based on the application of opposite party 2nd set regarding dispute amongst the parties over a piece of land, Case No. 229 M of 2012 was started under section of 144 of Cr.P.C. In the said case, the opposite party 2nd set claimed that he had purchased land from one Surji Devi *vide* sale deed no. 14729 dated 20.7.2012 for consideration of rupees 1,83,000/- however, in the said sale deed Khata no. 943 was wrongly mentioned which was again corrected as Khata no. 28 by said Surji Devi *vide* sale deed no. 24034 dated 29.11.2012. As per case of opposite party 2nd set Surji Devi was adopted daughter of late Sudhiya Devi. Later on Case No. 229 M of



2012 was dropped by the learned Sub-divisional Magistrate, Katihar *vide* his order dated 19.1.2013 on the ground that statutory period of 144 proceeding was going to expire. After dropping of aforesaid 144 proceeding, the opposite party 2nd set on the almost same set of facts had again got submitted non F.I.R. No. 16 of 2013 dated 30.6.2013 by the police before learned Sub-divisional Magistrate, Katihar regarding alleged dispute over land in question and again Case No. 144 M of 2013 was started under Section of 144 of Cr.P.C., *vide* order dated 8.7.2013.

5. After service of notices, the petitioner appeared and objected to the claim of opposite party 2nd set as well as the maintainability of said proceeding on various grounds of law and facts. The opposite party 2nd set also submitted his show cause on the almost same set of facts as taken by him in the earlier proceeding aforesaid. However, in the month of June 2014 to the utter surprise of the petitioner, he received copy of notice issued under section 145 of Cr.P.C. by the learned Sub-divisional Magistrate, Katihar and he approached the concerned office to enquire about it but no satisfactory reply was given to him regarding passing of order dated 5.9.2013 behind his back. Thereafter, he appeared in the case on 11.6.2014, the date fixed,



with prayer for adjournment which was granted. In the meantime, the petitioner also became aware about pendency of Mutation Appeal No. 722 of 2014 filed by opposite party 2 set before the learned Deputy Collector Land Reforms against the order of rejection of his claim of Mutation over the land in question and thus on 6.8.2014, the petitioner filed an application in the Case No. 144 M of 2013 challenging its maintainability on various grounds of law and facts on the basis of which direction was issued to the opposite party 2nd set for filing rejoinder. But with an intention to delay the matter, neither any rejoinder was filed by the opposite party 2nd set on subsequent dates nor any final order was passed by the learned Sub-Divisional Magistrate, Katihar on the application of petitioner and thus having found no alternative the petitioner applied for certified copy of entire order sheet of case no. 144 M of 2013 which was prepared and handed over to him on 22.10.2014.

6. The learned counsel for the petitioner has submitted that after receipt of copy of order sheet, the petitioner challenged the validity of order dated 5.9.2013 well within limitation period from the date of receipt of copy of order by filing Criminal Revision no. 131 of 2014 dated 11.11.2014 before the learned District and Session Judge, Katihar, which



came for final hearing before the learned Additional District and Session Judge IIIrd, Katihar. During pendency of Criminal Revision no. 131 of 2014, as per legal advice, the petitioner also filed an application under section 5 of Indian Limitation Act, on 17.1.2015 for condonation of delay if any, in filing the Criminal Revision Application in the circumstances mentioned above. He further submitted that in the said Criminal Revision case opposite party 2nd set appeared and filed his rejoinder on 17.3.2015 in which he objected the maintainability of the case mainly on the ground that Criminal Revision was barred by limitation and the matter was heard by the learned Additional District and Session Judge IIIrd, Katihar, who after hearing rejected the Criminal Revision case in illegal manner vide his impugned order dated 5.8.2015 on the ground of limitation by committing error of record and holding that the explanation for condoning the delay given by the petitioner was not satisfactory.

7. The learned counsel for the petitioner has further submitted that the impugned judgment and order dated 5.8.2015 has been passed by the learned Additional District and Session Judge IIIrd, Katihar in wholly illegal manner and is not sustainable in the eye of law. He further submits that it would be evident from the contents of order sheet of Criminal Revision



case 131 of 2014 that the learned Additional District and Session Judge IIIrd, Katihar has been himself admitted that the petitioner became aware about order dated 5.9.2013 at least on 6.8.2014, but he refused to condone the delay without considering and stating a single word regarding the explanation of delay in filing criminal revision application for the period in between 6.8.2014 to 11.11.2014 given in application for condonation of delay, which would be of about two months.

8. The learned counsel for the State has vehemently opposed the application of the petitioner.

9. I have heard and considered the submissions of the parties and have gone through the material available on record.

10. In the opinion of this Court, the revision application should have been heard on merits after condoning the delay as the petitioner became aware of the order dated 05.09.2013 at least on 06.08.2014.

11. In view of the discussions made above, this Court is of the opinion that the impugned order dated 05.08.2015 passed by the learned Additional District and Sessions Judge IIIrd, Katihar, is not sustainable in law and the



same is hereby quashed.

12. Accordingly, the present application stands allowed and the matter is remanded to the learned Additional District and Sessions Judge IIIrd, Katihar/concerned Court below for fresh consideration keeping in view the facts of the case and after considering the explanation for the delay in filing the revision petition. The Court below shall pass a reasoned order on the merits in accordance with law after hearing both parties.

(Sandeep Kumar, J)

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