
(2012) 10 PAT CK 0059

In the Patna High Court

Case No : Criminal Miscellaneous No. 19057 of 2010

Bhola Saw @ Bhola Kumar Gupta and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(3), 482
Penal Code, 1860 (IPC) — Section 323, 34, 341

Citation : (2013) 2 PLJR 604

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Heard Sri Ravindra Kumar Sinha, learned counsel, who was assisted by Sri Gajendra Nath Ojha, learned counsel for the petitioners, Md. Sufiyan, learned Addl. Public Prosecutor as well as Sri Rabindra Kumar, learned counsel, who has appeared on behalf of complainant/opposite party no. 2. Initially, four petitioners had filed the present petition, however; during the pendency of this petition, petitioner no. 1 (Malti Devi) died and by order dated 3.10.2012, her name was expunged from the record.

2. The present petition was filed with a prayer to quash an order dated 22.4.2010 passed by learned 3rd Additional Sessions Judge, Nalanda at Biharsharif (hereinafter referred to as "Addl. Sessions Judge"), whereby, learned Addl. Sessions Judge had rejected the Cr. Revision No. 38 of 2010, which was preferred against order dated 14.1.2010 passed by learned Judicial Magistrate, 1st Class, Nalanda at Biharsharif (hereinafter referred to as "Magistrate") in Complaint Case No. 1352(C) of 2007. By the said order, learned Magistrate had taken cognizance of offence under Sections 341 & 323/ 34 of the Indian Penal Code.

3. Learned counsel for the petitioners, while assailing both the orders, has raised several grounds.

4. Besides hearing the parties, I have also perused the materials available on record, including both the orders. On perusal of the record, the Court is satisfied that there is no infirmity in the order of cognizance. Similarly, order of cognizance was affirmed by the revisional court by assigning detailed reasons. After rejection of revision petition, the petitioners had filed present petition in the garb of Section 482 of the Code of Criminal Procedure, which primarily amounts to second revision, which is not permissible u/s 397(3) of the Code of Criminal Procedure. Moreover, the complaint petition discloses offences, for which, cognizance order has been passed.

5. I do not find any ground for interference with either of the orders i.e. order dated 14.1.2010 passed by learned Judicial Magistrate, 1st Class, Nalanda at Bihar Sharif in Complaint Case No. 1352(C) of 2007 as well as order dated 22.4.2010 passed by learned 3rd Additional Sessions Judge, Nalanda at Bihar Sharif in Cr. Revision No. 38 of 2010, that too while exercising power u/s 482 of the Code of Criminal Procedure, which is to be exercised in exceptional and rarest of the rare cases. The petition stands dismissed.