

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59978 of 2021

Arising Out of PS. Case No.-57 Year-2018 Thana- MADHEPURA COMPALINT CASE
District- Madhepura

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1. VISHNU KUMAR YADAV Son of Late Ray Vahadur Keshav Prasad Mandal @ Keshav Prasad Manda. Resident of Village- Murho, P.S. and District- Madhepura.
 2. ASHOK KUMAR Son of Vishnu Kumar Yadav Resident of Village- Murho, P.S and District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Ramrup Sah Son of Late Bindeshwari Sah Resident of Village- Arnama, Gram Panchayat- Belo, P.S.- Murliganj, District- Madhepura.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Pramod Mishra, Advocate Mrs.Geeta Kumari, Advocate Mr.Rohit Ranjan, Advocate
For the Opposite Party/s :		Mr.Choubey Jawahar, APP

CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT

Date : 18-06-2026

Heard learned counsel for the petitioners and learned
Additional Public Prosecutor for the State.

2. The petitioners have approached this Court under Section 482 of the Code of Criminal Procedure seeking quashing of the order dated 27.08.2021 passed by the learned Sessions Judge, Madhepura in Criminal Revision No. 72 of 2020.

3. O.P. No. 2 filed Complaint Case No. 57 of 2018 before the learned Judicial Magistrate, 1st Class, Madhepura alleging offences under Sections 323, 341, 406, 420 and 504/34 of



the Indian Penal Code. After recording the statement of the complainant on solemn affirmation and examining two inquiry witnesses, the learned Magistrate took cognizance on 06.10.2018 under Sections 323, 341, 417 and 504 IPC. Sections 406 and 420 IPC were not found made out on the material available and were accordingly excluded. Summons were issued to the accused petitioners under Section 204 Cr.PC.

4. The case proceeded to trial as a summons case. Five witnesses were examined in the course of that trial. Thereafter, O.P. No. 2 filed a petition dated 13.01.2020 purportedly under Section 216 CrPC, seeking alteration of the cognizance order and addition of Sections 406 and 420 IPC against the petitioners. The petitioners filed a rejoinder opposing the said petition on 31.01.2020. The learned Magistrate, *vide* order dated 03.03.2020, rejected the petition. He found no cogent evidence on record to warrant addition of the said sections and further observed that the petition appeared to have been filed with the object of causing delay in disposal of the case. That order is Annexure-4 to this petition.

5. O.P. No. 2 challenged that order by filing Criminal Revision No. 72 of 2020 before the learned Sessions Judge, Madhepura. The revision was decided *vide* the impugned order



dated 27.08.2021. The learned Sessions Judge allowed the revision, set aside the order dated 03.03.2020, and directed the learned Magistrate to pass a fresh order in the light of Sections 216(1) and 259 CrPC. The petitioners are before this Court assailing that order.

6. Before advertng to the merits, a preliminary but fundamental infirmity must be noticed. The revision was decided entirely in the absence of the petitioners. The process server's report on record, which is Annexure-6 to this petition, discloses that on proceeding to the address of the petitioners at Village Murho, P.S. Madhepura to serve notice, no one was found at the given address and the process server was informed that nobody lives there. He thereafter merely pasted the notice on the wall of the house and made his report accordingly. This is not service. Personal service was not effected. No adult member of the family received the notice. Pasting a notice on the wall of a house whose occupants are stated to be absent and of which it is reported that nobody lives there cannot, by any stretch, constitute due and proper service so as to bind the petitioners. The consequence is plain. The petitioners had no knowledge whatsoever of the pendency of the revision, were never heard, and the impugned order was passed entirely behind their back. An order passed in



such circumstances, in plain violation of the principles of natural justice, is a nullity. This alone is sufficient to quash it.

7. The petition succeeds on merits as well.

8. The petition filed by O.P. No. 2 before the learned Magistrate was under Section 216(1) Cr.PC. Section 216(1) provides that any Court may alter or add to any charge at any time before judgment is pronounced. The provision is unambiguous. It speaks of a charge. It presupposes the existence of a formally framed charge capable of being altered or added to. Complaint Case No. 57 of 2018 is a complaint case triable as a summons case under Chapter XIX-B of the Code. In a summons trial, no charge is formally framed. The procedure under Section 251 Cr.PC requires the Magistrate only to state the substance of the accusation to the accused and to ask whether he pleads guilty. There is no formal document of charge drawn up, read over and signed as in a warrant case. There is, in law, no "charge" within the meaning of Section 216 Cr.PC in a summons trial that can be altered or added. The petition filed by O.P. No. 2 invoking Section 216 Cr.PC was therefore not maintainable at the threshold. The learned Magistrate was entirely correct in rejecting it.

9. The learned Sessions Judge, apparently conscious of this difficulty, directed the learned Magistrate to also consider the



matter in the light of Section 259 CrPC. Section 259 empowers a Magistrate, when in the course of a summons trial relating to an offence punishable with imprisonment exceeding six months it appears that the interests of justice so require, to convert the case into a warrant case trial and to rehear it accordingly, with the power to recall witnesses already examined. This is a power vested exclusively in the trial Magistrate. It is to be exercised in the exercise of judicial discretion during the course of trial, not directed by a revisional court as an instrument to enable addition of charges that the trial court has consciously and upon application of mind already declined to add. What the learned Sessions Judge has done is to substitute his own view for that of the learned Magistrate on a question that is squarely within the domain of the trial court. That is not the function of a revisional court. The impugned order is bad on this count as well.

10. The learned Magistrate's order dated 03.03.2020 discloses application of judicial mind. He perused the complaint petition, the statement of the complainant, the depositions of the five witnesses examined during trial, and the material available on the case record. He heard both sides. He found no cogent evidence to take cognizance of Sections 406 and 420 IPC. That finding is neither perverse nor contrary to the record. The revision against



such an order was misconceived. The interference by the revisional court was unwarranted.

11. The petition is allowed. The impugned order dated 27.08.2021 passed by the learned Sessions Judge, Madhepura in Criminal Revision No. 72 of 2020 is hereby quashed. The order dated 03.03.2020 passed by the learned Judicial Magistrate, 1st Class, Madhepura in Complaint Case No. 57 of 2018 is restored. The learned Magistrate shall proceed with the trial on the basis of the cognizance originally taken on 06.10.2018 under Sections 323, 341, 417 and 504 IPC, uninfluenced by any observation made in the impugned order.

(Ansul, J)

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AFR/NAFR	AFR
CAV DATE	NA
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