

**In the Court of Addl. Sessions Judge- I,
Vaishali at Hajipur,
S.Tr No.- 117/2020**

In the matter of :-

Subhansh Mishra and Others

..... Accused

Vs

The State of Bihar

..... Opposite Party

Learned Counsel for petitioner:- Shree Vijay Kumar, Advocate

Learned Counsel for Opposite party :- Shree B.N Singh, Advocate

Date of order :- 09.02.2023

ORDER

A petition has been filed on 02.09.2021 on behalf of the informant for taking cognizance upon the order passed in Crl. Revision no. 49/2020 by the learned court of District and Sessions Judge, Vaishali at Hajipur on 30.01.2021. The counsel for the informant as well as the counsel for the accused have already been heard upon the petition.

The basis of this petition is the order passed by learned Sessions Judge, Vaishali in Crl. Revision no-49 of 2020 wherein the learned court has observed that “ after hearing the parties and going through the record available before this court, it appears to this court that the impugned order of the court below took cognizance against only four persons and left the other accused by not taking cognizance. It appeared from the content of the FIR that the others against whom cognizance was not taken took active part in the alleged commission of the offence as one of them Pintu Mishra assaulted with sharp cutting weapon upon Dipa Kumari @ Muskan and as such the lower court should have taken notice of these things and further appeared from the case diary itself that all the accused persons took active

participant in the alleged offence”.

The revisional court further observed that “ It further appeared that the lower court has opined that the supplementary investigation is still on and it can be taken into notice finally after the completion of the investigation. But, in the opinion of this court if prima-facie appeared from the face value of the record, the learned lower court must have deviate from the finding of the investigating agency as it is a settled principle of law because it is a case of murder trial as such no one is to be escaped from the initial stage. Section 401(1) Cr.P.C authorizes the court to exercise power as suo-moto apart from the application from a part or otherwise. So the impugned order of the court below has wrongly applied its discretion in issuing process as this court feels that issuing the process against whom cognizance is taken is capricious and arbitrary having been based other on no evidence or on materials which are wholly irrelevant or inadmissible whatsoever. The learned court below should have taken the cognizance at the same breadth at the against all the persons. Hence, the order passed by the court below is not perfect and therefore the instant criminal revision stands allowed”.

From perusal of the subordinate court record I find that on 05.06.2020 it has been written by the incharge court of ACJ-13th, in the margin of the order sheet “cog is taken as per CS and PP sent to accused through jail staff”. Further on 08.07.2020 the case of Guriya Devi, Choti Kumari, Sudhanshu Mishra and Subhash Mishra has been committed to the Sessions court. The order of the revisional court passed on 30.01.2021 received to this court dated 16.01.2021/04.02.2021 as the case had already been committed and so transferred to this court on 20.08.2020.

It is pertinent to mention here that while taking cognizance vide order dated

05.06.2020 the incharge ACJM-13th has clearly mentioned that investigation is continued against other accused persons. The revisional order has directed, in clear words that the cognizance taking court has to take cognizance a fresh on the material available in the case diary. The revisional court of District Sessions Judge was further pleased to observe that the order passed by the court below is not perfect and therefore the instant criminal revision stands allowed.

Again a criminal miscellaneous no. 97 of 2021 was filed by Bibha Devi, W/o Rajeev Mishra before the learned Sessions Judge. The learned Sessions Judge vide order dated 07.12.2021 refused to sent back the record of Sessions Trial no. 117/2020 to the court of cognizance taking court for fresh cognizance as after committment of the case the cognizance taking court becomes functus officio for that case and he cannot again take cognizance without any direction criminal miscellaneous no. 97/2021 was disposed of as not maintainable.

As the cognizance order dated 05.06.2020 says that investigation against other accused persons is still continued and a supplementary record has been opened by the court of ACJM-13th I think it proper to call for a report from ACJM-13th regarding present position of the supplementary record of Sarai PS Case no. 60/2020. Put up this case for final order after receipt of report from the court of ACJM-13th.

(Deepak Kumar Singh)
Addl. Sessions Judge-I
Vaishali at Hajipur
09.02.2023