

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21333 of 2015

Arising Out of PS.Case No. -779 Year- 2005 Thana -WEST CHAMPARAN COMPLAINT District-
WESTCHAMPARAN(BETTIAH)

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1. Jabir Shah Son of Late Jahur Shah
2. Noor Nesha wife of Jabir Shah Resident of Ujjain Tola, Bettiah, Ward
No. 27, P.S. - Bettiah Town, District - West Champaran (Bettiah).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shahjahan Khatoon wife of Md. Jafar Shah @ Munna Sah, Daughter of
Shamsul Haque resident of Mathia, P.S. Ram Nagar, District West
Champaran (Bettiah).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar
For the Opposite Party/s : Mr. Shantanu Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH
ORAL ORDER

3 31-08-2015 Heard learned counsel for the petitioners and learned
counsel for the State.

In the instant application filed under Section 482 of the
Code of Criminal Procedure, the petitioners seek quashing of the
order dated 20.10.2014 passed by the learned Sub-Divisional
Judicial Magistrate, Bagha, West Champaran in connection with
Trial No. 644 of 2014 arising out of Complaint Case No. 779 of
2005 by which the application filed under Section 317 of the Code
of Criminal Procedure for dispensing with the personal attendance
of the petitioners have been rejected and a non-bailable warrant of
arrest has been issued against the petitioners after cancelling their

bail bonds.

The petitioners have been made accused in complaint case no. 779 of 2005 dated 23.11.2005 in which cognizance has been taken under Section 498-A of the Indian Penal Code and summonses were issued for appearance of the accused on 17.05.2006. The petitioners happen to be distant relatives of the husband of the complainant.

It is contended that the petitioner nos. 1 and 2, being husband and wife, had gone to Lucknow for treatment of petitioner no. 2, as per their appointment fixed with Dr. Deepak Kumar Agrawal. The petitioner no. 2 was treated on 20.10.2014 at Lucknow and because of that they could not appear before the court on 20th October, 2014 in person. However, a petition was filed on their behalf under Section 317 of the Code of Criminal Procedure for dispensing them from their personal attendance and allowing them to be represented through lawyer. The learned Magistrate vide impugned order dated 20.10.2014 rejected the application filed on behalf of the petitioners and cancelled the bail bonds. The learned Magistrate also directed for issuance of non-bailable warrant of arrest vide impugned order dated 20.10.2014. It is contended that the petitioners being law abiding citizens are ready to appear before the trial court. They failed to appear on

20.10.2014 due to compelling reasons and there was no deliberate laches on their part.

On the other land, learned counsel for the State has submitted that on 20th October, 2014, the matter was fixed for judgment as the trial had already concluded and the petitioners deliberately failed to appear before the court in order to cause delay in delivery of the judgment. He has submitted that the application filed under Section 317 of the Code of Criminal Procedure was not a bonafide one and the same was filed in order to cause undue harassment to the complainant and delay the ultimate outcome of the trial.

Be that as it may, regard being had to the medical grounds taken by the petitioners, I take a sympathetic view of the matter. The petitioners are directed to appear before the learned Sub-Divisional Judicial magistrate, Bagha, West Champaran within one week from today, and in case they appear within the stipulated period, they shall be allowed to continue on the bail bond already furnished earlier by them and the court below shall recall its order dated 20.10.2014 subject to the condition that they furnish undertaking on oath before the learned Sub Divisional Judicial Magistrate that they would appear in person on the dates fixed by the court in future. In case they fail to abide by their

undertaking, the learned Sub Divisional Judicial Magistrate would be at liberty to cancel their bail bond. It is also made clear that in case the petitioners fail to appear within the stipulated period indicated hereinabove, the order passed by the learned Sub Divisional Judicial Magistrate on 20th October, 2014 shall its full effect.

Let the order be communicated to the court of learned Sub-Divisional Judicial Magistrate, Bagha, West Champaran through FAX at the cost of the petitioners.

(Ashwani Kumar Singh, J)

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