

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38725 of 2015

Arising Out of PS.Case No. -174 Year- 2011 Thana -SC/ST District- LAKHISARAI

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1. Shailendra Kumar Singh @ Munna Singh .
2. Birendra Prasad Singh @ Biro Singh. Both sons of Late Ravi Singh.
3. Dilip Kumar Singh @ Battu Singh S/o Shalu Singh. All resident of village- Ghosaith, Police Station- Piri Bazar, District- Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shankar Sada son of Doman Sada, resident of village- Chaukra Musahari (Bhagatpur), Police Station- Piri Bazar, District- Lakhisarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No.2
For the Opposite Party/s : Mr. Ambika Bhagat, Special P.P.
Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-10-2015

Heard learned counsel for the petitioners and learned counsel for the State.

2. By way of present application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioners seek quashing of the order dated 22.07.2015, passed by the learned Additional Sessions Judge-1, Lakhisarai in Sessions Case No. 395 of 2014 arising out of SC/ST P.S.Case No. 174 of 2011, whereby and whereunder the petition filed under Section 317 Cr.P.C. for dispensing with the personal attendance has been rejected and the bail bonds of the petitioners have been cancelled.

3. The petitioners are named accused in the aforesaid case. On completion of investigation the police submitted charge-sheet against them. Since the case is under the provision of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the matter was committed to the Court of Sessions for trial. At the stage of framing of charge, the petitioners denied charges and hence the trial commenced.

4. On 22.07.2015, an application under Section 317 Cr.P.C. was filed on behalf of the petitioners for dispensing with their personal attendance. On that day, the prosecution filed attendance of one of its witnesses for deposition. The application filed under Section 317 Cr.P.C. was not pressed. When the learned Additional Public Prosecutor produced the witness for examination on behalf of the prosecution in the first half, neither the petitioners nor their counsel was present. The Court waited for the petitioners and their counsel. Even in the second half when the case was called out neither the petitioners nor their counsel turned up. The deposition of the witness, who was present in Court, could not be recorded due to absence of the petitioners and their counsel. Being left with no option the trial Judge rejected the application filed under Section 317 Cr.P.C. on behalf of the petitioners and cancelled their bail bonds.

5. It would further appear from the impugned order dated



22.07.2015 that later on at about 3.45 p.m. an application was filed by the counsel for the defence expressing willingness to cross-examine the witness. It would be evident from the impugned order that after the rejection of application of the petitioners filed under Section 317 Cr.P.C. and cancellation of their bail bonds, the witness had already left the Court. A prayer was also made on behalf of the petitioners to recall the order whereby the application under Section 317 Cr.P.C. filed on behalf of the petitioners was rejected and bail bonds of the petitioners were cancelled. After hearing the parties, the trial Judge has held that it has no power to recall the order already passed.

6. Learned counsel for the petitioners submits that it was not proper for the Court to reject the application filed under Section 317 Cr.P.C. and simultaneously cancel the bail bonds of the petitioners on the same day. In this regard, he places reliance on a decision of this Court passed in ***Lalu Kumar Dwivedi Vs. State of Bihar*** [2007 (2) PLJR 572].

7. Learned counsel for the State has opposed the application filed by the petitioners under Section 482 Cr.P.C. He submits that there is no error in the order impugned. The mere filing of an application under Section 317 Cr.P.C. in itself cannot be construed that even without pressing the same the Court is bound to allow the same. He submits that every application filed before the



Court has to be pressed in an open proceeding before the Court. He submits that the reliance placed upon by the learned counsel for the petitioners on the decision of *Lalu Kumar Dwivedi* (Supra) is misconceived. According to him, in that case the trial court had accepted the representation under Section 317 Cr.P.C. and thereafter cancelled the bail bond of the accused and issued non-bailable warrants against him. In that context, a Bench of this Court has held the order to be bad.

8. I have heard respective Counsel for the parties and perused the record.

9. I find substance in the arguments advanced by the learned counsel for the State. In *Lalu Kumar Dwivedi* (Supra), this Court has held in paragraph 5 as under :-

“5. On a consideration of the entire facts and circumstances, this Court holds that the order dated 21.6.2005 is not in accordance with law as the court below having once accepted the representation under Section 317 Cr.P.C. it ought to have at least waited for the next date before issuing orders cancelling the bail bond of the petitioner and issuing non-bailable warrants against him, the same having not been done the order cannot be permitted to stand. It is accordingly set aside.”

(Underlining mine for emphasis)

10. In my view, the facts of the case of the petitioners are quite different. As noted above, in the instant case only an application was filed on behalf of the petitioners under Section 317 Cr.P.C. It was



never moved by the counsel for the petitioners before the Court. The trial was in progress and a witness had filed his attendance. The trial Judge has clearly recorded in his order that neither the petitioners nor their lawyer appeared before the Court either in the first half or in the second half of the day. Under such circumstances the deposition of the witness present in the Court could not be recorded.

11. Section 317 Cr.P.C. empowers a Judge or Magistrate to dispense with the personal attendance of an accused at any stage of an enquiry or trial if the attendance of the accused before the Court is not necessary in the interests of justice, if the accused is represented by a pleader. Section 273 Cr.P.C. mandates that except as otherwise expressly provided, all evidence taken in course of trial or other proceeding shall be taken in presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader. In absence of the accused or his pleader, the Judge or the Magistrate would not be justified in recording the evidence in course of the trial. Hence, it would be evident that the purpose of attendance of the accused at the trial is not merely a formality or compulsion, but for the reason that the trial be allowed to be conducted in an expedient manner. However, if the Court, in the facts and circumstances of the case, is of the view that great hardship and inconvenience shall be caused to the

accused, it may dispense with the personal attendance of the accused and allow him to be represented by a pleader. Apparently, in the present case the trial has been hampered due to absence of the accused and his pleader on the day on which a witness was in attendance for recording his evidence. Further, the trial court was fully justified in rejecting the application filed under Section 317 Cr.P.C. for the reason that the same was not moved before the Court by the counsel for the petitioners.

12. I am also of the view that the trial Judge has rightly held that it has no power to recall the order as there is specific bar under Section 362 Cr.P.C. whereby the law mandates that no Court when it has signed its judgment or order disposing of the case shall alter or review the same except to correct clerical or arithmetical error.

13. In view of the discussions made hereinabove, I find no merit in this application. Accordingly, the application is dismissed.

14. It is needless to say that in case the petitioners surrender before the trial Court, the learned trial Judge would be at liberty to consider the desirability to release them on bail.

(Ashwani Kumar Singh, J)

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