

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25138 of 2016

Arising Out of PS.Case No. -52 Year- 2013 Thana -NOKHA District- SASARAM (ROHTAS)

- =====
1. Meena Devi, W/o Jainath Sharma
 2. Om Prakash Sharma @ Titu Sharma, S/o Jainath Sharma
 3. Upendra Sharma, S/o Late Sukhdeo Sharma
 4. Raju Sharma, S/o Jainath Sharma
- All are resident of Village- Lewra, Police Station- Nokha, District- Rohtas.

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioners : Mr. Choubey Jawahar, Advocate

For the Opposite Party : Mr. Jitendra Kumar Singh 1 (App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 04-08-2016 Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor.

Gone through the order impugned dated 03.05.2016 passed by the IVth Additional District & Sessions Judge, Rohtas at Sasaram whereby and whereunder petition under Section 317 Cr.P.C. filed on behalf of petitioners has been rejected.

Learned counsel for the petitioners has submitted that as petitioners have already challenged the order of the cognizance and the same has not yet been heard, on account thereof presence of petitioners followed with framing of charge



will make the petition infructuous. In the aforesaid background, there happens to be proper and legal ground available to the petitioner to stay away from the proceeding by way of Sec. 317 Cr.P.C. As such, the order impugned should be set aside and further, an opportunity be provided to the petitioners so that during the intermediary period, petitioners be able to get the aforesaid petition properly tackled and disposed of.

Apart from this, it has also been submitted that in terms of sub-section (2) of Section 317 Cr.P.C., the learned Lower Court was not competent enough to cancel the bail bond and issue warrant of arrest rather the only option before the learned Lower Court was to bifurcate the trial and should proceed against the accused whose physical presence was before the learned Lower Court. So, from any view, the order impugned happens to be bad, consequent thereupon, fit to be set aside.

At the other end, the Additional Public Prosecutor has opposed the prayer and submitted that the order impugned is just, legal and proper and is to be confirmed.

As per Section 273 of the Cr.P.C., trial is to be commenced and proceeded with in presence of the accused. According to Section 223 of the Cr.P.C., the persons are being identified who are to be jointly tried. Under the garb of aforesaid



legal provision, presence of accused is found on each and every date subject to such exception as provided under Section 205 of the Cr.P.C. as well as under Section 317 of the Cr.P.C. But, the aforesaid provisions always depend upon the discretion of the Court and has to be exercised according to the facts as well as stage of the trial. Admittedly, so far present case is concerned, from the order impugned that means to say the order dated 03.05.2016 as well as the previous order dated 05.04.2016, it is apparent that petitioners were being represented under Section 317 Cr.P.C. inspite of the fact that the case was fixed for charge and further, even allowing the aforesaid prayer, they were directed to be physically present. When they flouted the order of the Court, then in that event, the only option available to the Court for procurement of their appearance for the purpose of framing of charge was to cancel their bail bond and issue warrant of arrest. Certainly, had there been such direction on the same date, then, in that event, was immutable but petitioners were availing benefit of Section 317 Cr.P.C. since before and further, were disgraceful towards the direction of the Court whereunder they were directed to be physically present before the Court to facilitate framing of charge.

Filing of petition before the superior Court is not a ground to disobey the order of the Court. As such, challenging the order of the cognizance was not a ground for the petitioners to remain absent defying the order of the Court.

Accordingly, the order impugned needs no interference and is accordingly, instant petition is rejected.

(Aditya Kumar Trivedi, J.)

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