

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20410 of 2016

Arising Out of PS.Case No. -33 Year- 2006 Thana -MATIHANI District- BEGUSARAI

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1. Ram Shankar Singh @ Bambam Singh, son of Upendar Narain Singh,
resident of Village - Maithani, PS. Maithani, District-Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar-Advocate
Mr. Mohit Shriwastava-Advocate

For the Opposite Party/s : Mr. Parmanand Prasad (A.P.P.)

For the Informant : Mr. Arbind Kumar-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 03-08-2016

Heard learned counsel for the petitioner, learned
Additional Public Prosecutor as well as learned counsel for the
informant.

2. Petitioner is aggrieved by an order dated
21.03.2016 passed by the learned Sessions Judge, Begusarai in
Sessions Trial No.668 of 2008 whereby and whereunder, a petition
purported under Section 317 Cr.P.C. filed on behalf of petitioner
stood rejected and further, with its ultimate consequences by way
of cancelling the bail bond followed with issuance of warrant of
arrest non-bailable.

3. The sheet anchor of submission having on behalf
of petitioner is Annexure-4, an order dated 09.09.2008 passed



under Cr.W.J.C. No.699 of 2008. It has been submitted on behalf of petitioner that as held earlier in the aforesaid case, in case, petition under Section 317 Cr.P.C. was to be rejected, then in that event, subsequent adjournment has to be granted in order to facilitate presence of accused. In the present case, the learned lower Court had not exercised such mandate of law while rejecting a petition purported under Section 317 of the Cr.P.C. by way of granting an adjournment to enable the petitioner to have his physical presence. Therefore, submission is that the order impugned happens to be bad as well as contrary to aforesaid judicial pronouncement and so, is fit to be set aside.

4. Learned Additional Public Prosecutor opposed the prayer and submitted that the order impugned happens to be in accordance with law and so, did not require interference.

5. Instant case originates on the basis of the fard-beyan of one Maheshwar Yadav on account of commission of murder of his son Rakesh Kumar @ Fantush by the accused persons including the petitioner whereupon Matihani P. S. Case no.33 of 2006 was registered. After submission of chargesheet, the case was committed in the Year 2008 itself bearing Sessions Trial No.668 of 2008. Subsequently thereof, it happens to be the accused persons, who commanded the subsequent event and that



happens to be reason behind that even after expiry of eight years from registration of Sessions Trial and ten years after the date of occurrence, charge has not yet been framed. The accused persons are putting their absence on wrong and flimsy grounds as is evident vide order dated 03.02.2016 Annexure-2 that accused-petitioner has gone outside for the purpose of treatment which never been substantiated by cogent and reliable documentary evidence.

6. It is also evident that prayer made on behalf of petitioner including others under Section 227 Cr.P.C. was rejected on 03.02.2016 fixing dated 08.02.2016 for framing of charge and for that, physical appearance was directed which never materialized.

7. This happens to be the conduct of the petitioner whereupon the charge could not be framed as yet.

8. Now, coming to legal score, first of all, Section 317 Cr.P.C. is to be seen which runs as follows:-

“317. Provision for inquiries and trial being held in the absence of accused in certain cases.-

(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the



Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.”

9. From Sub-section-1 of Section 317 Cr.P.C., the first requirement for dispensing with physical appearance of an accused relates with forming an opinion by the Court that physical appearance of an accused is not necessary. Right from rejection of prayer of the petitioner including others vide Annexure-2 dated 03.02.2016 under Section 227 of the Cr.P.C., the physical presence of accused persons were needed for framing of charge

and on account thereof, there was no question remained left before the learned lower Court for dispensing with physical presence of the accused. Because of the fact that so many adjournments have already been granted since thereafter asking for physical presence of the accused, then in that event, the rejection of the petition in consonance with cancellation of bail bonds and issuance of warrant of arrest happen to be just and proper and further, needs no interference. The Annexure-4, judgment of Cr.W.J.C. No.699 of 2008 dated 09.09.2008, also substantiated the same as is evident from Para-16 thereof, whereunder it has been observed:-

“A magistrate while rejecting a representation under section 317 Cr.P.C., cannot at the same time cancel bail bond and issue non bailable warrant of arrest, if on preceding dates has not clearly directed that personal attendance under section 317 Cr.P.C. will no longer be dispensed with.”

10. That being so, instant petition lacks merit and is accordingly, rejected.

(Aditya Kumar Trivedi, J)

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