

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2146 of 2017

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1. Ajay Kumar Gupta, Managing Director, Adroit Financial Services Pvt.Ltd., 401/402, 4th Floor, Angel Mega Mall, Kaushambi, Ghaziabad, U.P.
 2. Adroit Financial Service Pvt.Ltd., Adroit Financial Services Pvt.Ltd., 401/402, 4th Floor, Angel Mega Mall, Kaushambi, Ghaziabad, U.P through its Managing Director.
 3. Mohit Sharma, Adroit Financial Services Pvt.Ltd., 401/402, 4th Floor, Angel Mega Mall, Kaushambi, Ghaziabad, U.P .
 4. Atul Gupta, Adroit Financial Services Pvt.Ltd., 401/402, 4th Floor, Angel Mega Mall, Kaushambi, Ghaziabad, U.P .
 5. Mahesh Chander, Adroit Financial Services Pvt.Ltd., 401/402, 4th Floor, Angel Mega Mall, Kaushambi, Ghaziabad, U.P Petitioners
- Versus
1. The State of Bihar, through the Director General of Police, Bihar, Patna.
 2. Markandeya Singh, Son of Late Sheo Prasanna Singh, R/o C/24 Vijay Nagar, Road No.2 (Hanuman Nagar) , P.S.- Patrakar Nagar, Patna. Respondents
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Appearance :

For the Petitioner/s : Mr. Vinay Mistry, Adv.
: Mr. Sanket, Adv.
For the Respondent/s : Mr. Sheo Shankar Prasad , S.C.8.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 09-11-2017

Heard learned counsel for the parties.

2. This writ application has been preferred against order dated 20.09.2017 passed by learned Additional District & Sessions Judge-III, Patna in Misc. Complaint Case No.01 of 2015 whereby the learned Trial Judge has ordered for issuance of non-bailable warrant of arrest against the petitioners without ensuring service of summons already issued against the petitioners.

3. Reliance has been placed on behalf of the petitioners on case *Jayant Dang Vs.The State of Bihar & Ors* reported in *2004 (4) PLJR 25*. In paragraph-6 of the said



judgment, a Coordinate Bench of this Court has held as follows:-

“6. Having considered the rival submissions of the Counsel for the parties this Court holds that it is not in dispute from the records that accused no.6 in fact entered appearance at the stage of summons. In so far as accused no.2 is concerned, there was no service report with regard to summons when warrants came to be issued against him on 11.01.2000. Chapter VI of the Code of Criminal Procedure details the procedure of issuance of and service of summons. The stage of warrant as contained in Part B of Chapter VI arises only thereafter. In the absence of any order recording the satisfaction of the Court below with regard to the service of summons according to law, the bailable warrants issued against the petitioner (accused no.2) cannot be sustained. In the circumstances, this Court holds that the issuance of warrant against accused no.2 was not justified at this stage. Reliance may be had upon the judgment of this Court reported in 2000 (3) PLJR 251. Warrants thus having been issued contrary to law the proceedings would be deemed to be at the stage of summons and the accused no.2 having entered appearance at this stage cannot thus be denied the benefit of consideration for grant of relief under Section 205 Cr.P.C. This Court therefore holds that the proceedings in so far as



accused no.2 be concerned, rests at the stage of summons.”

4. On perusal of the entire order sheet of the court below annexed as Annexure-2, it is evident that there is no report of service of summons on the record, therefore, issuance of non-bailable warrant of arrest against the petitioners is bad in law in view of the aforesaid judgment as well as the fact that there was no material before the learned Magistrate to satisfy that the petitioners are not honouring the summons issued by the court below. Therefore, impugned order stands quashed and in the event, the petitioners appear before the court below within a month, the same shall be treated as appearance on summons. The aforesaid period of one month shall be counted from the date of disposal of the petition of the petitioners filed under Section 205 of Cr.P.C., if any, and pending before the court below.

5. With the aforesaid observation, this writ application stands disposed of.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.11.2017
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