

**IN THE HIGH COURT OF JUDICATURE AT
PATNA**

Criminal Miscellaneous No.37843 of 2013

Arising Out of PS.Case No. -74 Year- 1999 Thana -SANGRAMPUR District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Munna Khan S/O Anwarool Khan R/O Vill- Dariyapur, P.S- Sangrampur, Distt- East Champaran
 2. Chunnu Khan S/O Anwarool Khan R/O Vill- Dariyapur, P.S- Sangrampur, Distt- East Champaran
 3. Haroon Khan S/O Ayub Khan R/O Vill- Dariyapur, P.S- Sangrampur, Distt- East Champaran
 4. Farooque Khan @ Farookh Khan S/O Ayub Khan R/O Vill- Dariyapur, P.S- Sangrampur, Distt- East Champaran

.... Petitioners

Versus

1. The State Of Bihar
2. Monaf Khan S/O Late Posan Khan R/O Vill + P.O Dariyapur, P.S- Sangrampur, Distt- East Champaran.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Virendra Kuar, Advocate

For the Opposite Parties : Mr. Dr.Ajit Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL ORDER

3 18-01-2017 Heard both sides.

The petitioners have filed this petition under Section 482 of the Criminal Procedure Code for quashing the order dated 16.03.2012 passed by SDJM, Motihari in Trial No. 1699/2010/1069/2012. The learned SDJM, Sadar, Motihari finding no chance of appearance of the petitioners in pursuance of the process issued by the Court, declared them absconder and further ordered for issuance of permanent warrant against them. The petitioners filed Criminal Revision No. 44 of 2013 against



the said order which after hearing was dismissed as not maintainable as per the order dated 19.02.2013.

The learned counsel for the petitioners submitted that the order declaring these petitioners as absconder is not sustainable in view of the fact that there is nothing on the record to show that the summons, warrant of arrest or any kind of process were served upon the petitioners. The order declaring these petitioners absconder is against the material on record and is fit to be set aside.

The learned counsel for the O.P. No. 2 as well as learned APP, on the other hand, submitted that the petitioners deliberately did not appear on account of which the case remained pending for years. The order declaring absconder was rightly passed and this application under Section 482 Cr. PC is not tenable in the eyes of law.

On perusal of the record, I find that a police case vide Sangrampur P.S. Case 74 of 1999 (G.R. No. 1599 of 1999) was registered under Sections 341, 323, 324, 504 /34 I.P.C. against the petitioners. After investigation, a charge-sheet was submitted by police and the Judicial Magistrate finding prima facie case took cognizance of offence as per the order dated 08.11.2000 and ordered for issuance of summons. The case



remained pending for compliance of order of issuance of summons till 24.02.2001. The service report was not received and case remained pending for appearance till 24.09.2001. Thereafter, bailable warrant of arrest, non-bailable warrant of arrest and process under Sections 82 and 83 were ordered to be issued on different occasion. The case record travelled to different courts. The ordersheet of case record shows that the service report was not received and it remained pending for service report. From the perusal of order dated 27.08.2009, it appears that the office was directed to comply the order dated 27.08.2009 whereunder a reminder was to be given to Superintendent of Police. The said order was complied on 03.03.2012 (after three years) and without waiting its response, the court below as per impugned order declared the petitioners absconder. It appears that on the date of passing of said order there was nothing before the court below to presume that the petitioners were evading their appearance. The impugned order itself shows that the service report of process issued against the petitioners was not received. The court below without any material presumed that there is no chance of their appearance and declared the petitioners absconder and also ordered for issuance of permanent warrant. The observation of court below declaring



absconder is against the material on record and is not sustainable.

Accordingly, the order dated 16.03.2012 passed in Trial No. 1699/2010/1069/2012 is hereby set aside and petition stands allowed.

(Sanjay Kumar, J)

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