

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40173 of 2013

Arising Out of PS.Case No. -2855 Year- 2010 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Bhim Sen Dawra @ Bhim Sen Daurha Son Of Shri Pritam Das R/O 418/39,
Bhagwan Bazaar, Tehsil Ganaur Mandi, (Near Dhanker Complex), District
Sonepat, Haryana

2.Kavita Taneja Wife of Pawan Taneja R/O House No.76 A, Gali No.10,
Mansarover Garden, Delhi-110015

.... Petitioner/s

Versus

1. The State Of Bihar

2. Shailendra Kumar Son of Shri Bhagwan Singh R/O House No.D/49, Peoples Co-
Operative Colony, P.S. Kankerbagh, District-Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Narendra Kumar Singh, Advocate

For the State : Mr. Jharkhandi Upadhyaya, APP

For the Opposite Party : Mr. R. D. Kumar Singh, Advocate
Mr. Girish Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 27-04-2017

Heard both sides.

2. The petitioners filed this petition, under Section 482 of
the Code of Criminal Procedure (hereinafter referred to as the Code),
for quashing the order dated 16.08.2013 passed in Complaint case No.
2855(c) of 2010 whereby the learned Judicial Magistrate directed the
office to issue process under Section 82 of the Code against the
petitioners.

3. The facts relevant for disposal of this case, in brief, are
that the petitioners filed a petition under Section 205 of the Code to



allow them to be represented through their lawyer but the learned Magistrate by order dated 01.08.2013 dismissed the petition filed under Section 205 of the Code on the ground that none had appeared on their behalf when the witnesses of the complainant were present and directed the petitioners to appear on 16.08.2013. On 16.08.2013 the learned court below straightway directed to issue process under Section 82 of the Code.

4. The learned counsel for the petitioners submits that the order is bad in view of the provision as contained in Section 82 of the Code. The petitioners were asked to appear but once the petitioners did not appear warrant should have been issued against the petitioners but issuance of process under Section 82 of the Code straightway without issuance of warrant is absolutely illegal.

5. In reply to the aforesaid submission the learned counsel for the State as well as the learned counsel for the opposite party No.2 very fairly submitted that the order is not in accordance with law.

6. The only question arises for consideration as to whether the order of issuance of process under Section 82 of the Code is in accordance with law or not?

7. Section 82 of the Code reads as follows:-

“82. Proclamation for person absconding.-

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be



executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court- house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub- section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day."

8. From a bare perusal of provision as contained in sub-section (1) of Section 82 of the Code, it appears that firstly the court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or concealing himself so that such warrant cannot be executed and only on such satisfaction the court can issue process under Section 82 of the Code but from perusal of the order dated 01.08.2013 and subsequent order (impugned) dated 16.08.2013 it appears that no warrant was issued against the accused. The accused persons were allowed to be represented through their lawyer but the privilege was



cancelled only because the learned counsel appearing on behalf of the accused did not appear on 01.08.2013 and the accused were directed to be present without issuing warrant or recording satisfaction of the Court to the effect that accused are concealing themselves and have avoided to appear in court, the issuance of process u/s 82 of the Code is bad. Therefore, the order dated 16.08.2013, issuing process under Section 82 of the Code against the petitioners, is patently illegal. Accordingly, the order dated 16.08.2013 passed in Complaint case No. 2855(c) of 2010 is quashed.

This quashing petition is allowed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	5.5.2017
Transmission Date	5.5.2017

