

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35611 of 2013

Arising Out of PS.Case No. -321 Year- 2003 Thana -BEGUSARAI TOWN District- BEGUSARAI

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1. Vikash Gautam Son Of Late Ram Suresh Singh Resident Of Vill-
Ramdiri. P.S- Matihani. District - Degusarai.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Singh

For the Opposite Party/s : Mr. Md. Ansural Haque (App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 18-01-2017 Heard the parties.

By way of the present application filed under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the order, dated 30.07.2012, passed in G.R. No. 2025 of 2003, arising out of Begusarai Town P.S. Case No. 321 of 2003, dated 29.08.2003, whereby and whereunder, Sri Awadhesh Kumar Razak, learned Judicial Magistrate cum Additional Munsif, Begusarai had declared the petitioner absconder.

It appears from the perusal of the record that Begusarai Town P.S. Case No. 321 of 2003 was lodged against the petitioner for offence punishable under Sections 147, 148, 149, 341, 323, 349, 324, 504 of the Indian Penal Code, the police after investigation submitted charge-sheet against the petitioner under



the above Sections of I.P.C. and thereafter the learned Chief Judicial Magistrate taken cognizance against the petitioner under aforesaid Sections of I.P.C. vide order, dated 05.10.2004. It further appears from the record that earlier the petitioner was granted bail by learned Chief Judicial Magistrate, Begusarai vide order, dated 02.09.2003. Later on the petitioner avoided appearance before the Court below and subsequently on 24.11.2004 summon was issued against the petitioner and after non appearance,ailable warrant was issued on different dates but the petitioner did not appear. In this case non-ailable warrant was also issued upon the petitioner on 05.07.2005 but in spite of that also, the petitioner did not appear. Thereafter a process under Section 82 of the Cr.P.C. was issued on 18.07.2008 against the petitioner and subsequently a process under Section 83 of the Cr.P.C. was also issued against the petitioner on 11.11.2009, but the petitioner again failed to mark his appearance. Lastly vide order, dated 30.07.2012, Sri Awadhesh Kumar learned Judicial Magistrate cum Additional Munsif, Begusarai, declared the petitioner as absconder, which is under challenge in the present application.

Learned counsel for the petitioner submitted that the entire order-sheet will show that earlier summon was issued upon the petitioner but without waiting for the valid service of notice,



the warrant of arrest was issued against the petitioner on different dates and thereafter also without waiting for execution report non-bailable warrant was issued against the petitioner and later on processes under Sections 82 and 83 was also issued against the petitioner without waiting for execution report. It has further been submitted that the learned Court below without waiting for the service report of summon/execution report and execution of N.B.W., has also issued processes under Sections 82 and 83 of the Cr.P.C. against the petitioner and lastly vide order, dated 12.07.2012, declared the petitioner absconder, which is clearly against the provisions contained in Code of Criminal Procedure and the same is not sustainable in the eye of law and fit to be quashed.

Learned Counsel appearing on behalf of the State submitted that the petitioner was very much aware with all the aforementioned summon, warrant, non bailable warrant and processes issued under Sections 82 and 83 of the Cr.P.C and the act of non-appearance is clearly an intentional one and now on technical ground, he has come before this Court for quashing of the order, 12.07.2012 and, therefore, there is no merit in the present application.

Having heard both sides from perusal of the record



including copy of order-sheet of the Court below, filed as Annexure -3 to this petition, it appears that without waiting for the execution report of the bailable warrant issued against the petitioner, he was declared absconder. It further appears from the order-sheet (Annexure -3) that no steps have been taken by the Court below to obtain the execution report and went on to pass order one after another on a very perfunctory manner and ultimately declared the petitioner absconder vide order dated 12.07.2012. If the petitioner was continuously not appearing, the Court below should have asked for a report from the concerned Superintendent of Police.

In such view of the matter, the order, dated 12.07.2012, passed by Sri Awadhesh Kumar Razak, learned Judicial Magistrate cum Additional Munsif, Begusarai, is hereby quashed with the direction to the petitioner to surrender before the learned Court below and the learned Court below shall release the petitioner on bail to his satisfaction, on condition that he shall cooperate in the disposal of the trial and make himself available before the police/Court, as the case may be, as and when required and in the event of failure on his part to appear before the Court on two consecutive occasions, his bail bond shall be liable to be cancelled.



With the observation, as above, this application is
allowed.

(Vinod Kumar Sinha, J)

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