

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42524 of 2013

Arising Out of PS.Case No. -1581 Year- 2012 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Sri Rameshwar Yadav S/O Sri Mukhu Yadav Resident Of 6/1a/1k, Road No. 1, Near Water Purification Pump, Laxmi Nagar, Old Shangbi, Pune- 27
2. Mrs. Daulti Devi W/O Sri Rameshwar Yadav Resident Of 6/1a/1k, Road No. 1, Near Water Purification Pump, Laxmi Nagar, Old Shangbi, Pune- 27
3. Ashok Kumar Yadav S/O Sri Rameshwar Yadav Resident Of 6/1a/1k, Road No. 1, Near Water Purification Pump, Laxmi Nagar, Old Shangbi, Pune- 27
4. Amit Kumar S/O Satendra Yadav Resident Of 6/1a/1k, Road No. 1, Near Water Purification Pump, Laxmi Nagar, Old Shangbi, Pune- 27

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sweta Kiran W/O Arnesh Kumar And D/O Shri Hari Narayan Resident Of C/ 58, Police Station, Police Station- Gardanibagh, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Uday Narayan, Adv.
For the State : Mr. Parmeshwar Mehta, APP
For Opposite Party No.2 : Mr. Hare Ram Sah, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 17-04-2017

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the opposite party no.2.

2. By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioners seek quashing of the order dated 13.08.2013 passed by the learned Sub-Divisional Judicial Magistrate, Patna in Complaint Case No. 1581(C) of 2012 whereby the application of the petitioners filed under Section 205 of the Cr.P.C. has been dismissed.

3. The petitioners have been made accused in a complaint case. After issuance of summons and warrants, they filed their



application for grant of pre-arrest bail before the learned Sessions Judge, Patna. Their application for pre-arrest bail was allowed by the learned Sessions Judge and in obedience to the said order they appeared before the court and furnished bond and sureties to the satisfaction of the court. The case is pending for evidence before charge. At this stage, an application under Section 205 of the Cr.P.C. was filed by the petitioners for dispensing with their personal attendance, which has been rejected by the learned Sub-Divisional Judicial Magistrate vide order dated 13.08.2013.

4. Being aggrieved by the said order, the petitioners have preferred the present application under Section 482 of the Cr.P.C.

5. Section 205 of the Cr.P.C. confers power upon the Magistrate to dispense with the personal appearance of the accused and permit him to appear by pleader in an appropriate case after issuance of summons. It is well settled that a prayer for exemption from personal appearance under Section 205 of the Cr.P.C. can only be made at the stage of first appearance of the accused. Once the accused appears before the court in person without making any application for dispensing with the personal appearance under Section 205 of the Cr.P.C., at a subsequent stage, such an application would not be maintainable.

6. Here, I must record that there is yet another provision under the Cr.P.C. i.e. Section 317 of the Cr.P.C., which gives



discretion to the court to exempt a person from personal appearance.

7. Section 205 of the Cr.P.C. gives a discretion to the court to exempt a person from personal appearance at the initial stage till such time his personal appearance is necessary in the trial whereas Section 317 of the Cr.P.C. is a provision where on any particular date where the accused is required to be present in court and is unable to appear, he may seek leave and on being satisfied the court may dispense with his personal appearance and allow him to be represented through his lawyer.

8. In the present case, since the petitioners had already appeared after obtaining the order of pre-arrest bail and furnishing bond and sureties to the satisfaction of the court, the remedy available to the petitioners was under Section 317 of the Cr.P.C. and not under Section 205 of the Cr.P.C.

9. In that view of the matter, I see no merit in this application. The application is accordingly dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19-04-2017
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