

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50416 of 2016

Arising Out of PS.Case No. -891 Year- 2013 Thana -BEGUSARAI COMPLAINT CSAE District-
BEGUSARAI

=====

1. Ram Vilash Singh Son of Late Gita Singh
2. Kumar Sujata @ Sujata Kumari wife of Basant Kumar, Daughter of Ram Vilash Singh
3. Ashotosh Kumar @ Ashutosh Kumar @ Astosh Kumar Son of Ram Vilash Singh Resident of Village- Musadpur, P.S.- Barauni, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. Hari Shankar Kumar Son of Ramakant Kumar Resident of Village- Bharaul, P.S.- Bachhawara, District- Begusarai.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Sandip Kumar Gautam, Adv.

For the State : Mr. Jharkhandi Upadhyay, APP

For the Opposite Party No.2 : Mr. Sanjeet Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-09-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing the order dated 23.07.2015 passed by the learned Judicial Magistrate 1st Class, Begusarai in Complaint Case No. 891C of 2013 whereby the learned Magistrate has declared all the three petitioners absconder.

2. After holding inquiry under Section 202 of the Cr.P.C., the petitioners were summoned by the learned Judicial Magistrate vide order dated 26.08.2013 to face trial in Complaint Case No. 891C



of 2013.

3. Learned counsel for the petitioners has submitted that after issuance of the summoning order, even without obtaining the service report, bailable warrant of arrest was issued against the petitioners by the learned Magistrate vide order dated 24.10.2013 and in absence of the service report of bailable warrant, the non-bailable warrant of arrest was issued against the petitioners on 22.03.2014. Thereafter, vide order dated 24.01.2015, order of proclamation under Section 82 of the Cr.P.C. was issued and, on 02.06.2015, attachment order was issued under Section 83 of the Cr.P.C. against the petitioners. He has submitted that the petitioners are law abiding persons and have been illegally declared absconder even without obtaining service report of summons and bailable warrant of arrest.

4. Learned counsel for the State, after going through the entire order-sheet annexed by the petitioners, conceded that the summoning order and bailable warrants issued against the petitioners were never served upon them.

5. Learned counsel for the opposite party no.2 also does not dispute the aforesaid submissions made on behalf of the petitioners.

6. Considering the submission made on behalf of the parties, the entire proceeding of the complaint case after the summoning order on 26.08.2013 is vitiated.



7. Accordingly, the orders passed in Complaint Case No. 891C of 2013 after 26.08.2013 are set aside. Since the petitioners are being represented through lawyer, no notice is required to be issued against them by the jurisdictional Magistrate. They are directed to appear before the court of Magistrate within two weeks from today. In case, they fail to appear, the learned Magistrate shall be free to take coercive action against them to ensure their appearance before the court.

8. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08-09-2017
Transmission Date	08-09-2017

