

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.56882 of 2018

Arising Out of PS.Case No. -1490 Year- 2015 Thana -PATNA COMPLAINT CASE
District- PATNA

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1. Binod Sarawgi, son of Late Hanuman Sarawgi, resident of Swastik Fruits Products Pvt. Ltd., Swastik House, Upper Bazar, P.S. – Kotwali, Ranchi, District – Ranchi.
 2. Bishwanath Sarawgi, son of Late Hanuman Sarawgi, resident of Swastik Fruits Products Pvt. Ltd., Swastik House, Upper Bazar, P.S. – Kotwali, Ranchi, District – Ranchi.
 3. Bijay Sarawgi, son of Late Hanuman Sarawgi, resident of Swastik Fruits Products Pvt. Ltd., Swastik House, Upper Bazar, P.S. – Kotwali, Ranchi, District – Ranchi.
 4. Leela Sarawgi, Wife of Bijay Sarawgi, resident of Swastik Fruits Products Pvt. Ltd., Swastik House, Upper Bazar, P.S. – Kotwali, Ranchi, District – Ranchi.
 5. Binay Sarawgi, son of Late Hanuman Sarawgi, resident of Swastik Fruits Products Pvt. Ltd., Swastik House, Upper Bazar, P.S. – Kotwali, Ranchi, District – Ranchi.
 6. Rajiv Ranjan Bakshi, son of Vinod Kumar Bakshi, resident of Swastik Fruits Products Pvt. Ltd., Swastik House, Upper Bazar, P.S. – Kotwali, Ranchi, District – Ranchi.
 7. Aditya Sarawgi, son of Sri Bijay Sarawgi, resident of Swastik Fruits Products Pvt. Ltd., Swastik House, Upper Bazar, P.S. – Kotwali, Ranchi, District – Ranchi.

.... Petitioners

Versus

1. The State of Bihar
2. Ram Niwas Kumar, son of Late Rambachan Sharma, resident of Mohalla – Chandmari Road, P.S. – Kankarbagh, district – Patna Proprietor of M/s Ganpati Enterprises, Shalimar Cold Storage, Anishabad, P.S. – Beur, District – Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Vinay Mistry
For the Opposite Party/s : Mr. Ashok Kumar

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2. 01-10-2018

Learned counsel for the petitioners submits that the order taking cognizance and issuance of summons passed in the present case was under challenge in Cr. Misc. No.



46091/2015 and Cr. Misc. No. 48920/2015 on 15.10.2015 and learned coordinate Bench of this court had stayed further proceeding in complaint case No. 1490(C) of 2015 pending in the court of learned Judicial Magistrate, 1st Class, Patna.

It is further submitted that the two Criminal Miscellaneous Applications were ultimately withdrawn on 27.06.2018 as the petitioner were given liberty to raise all the objections and grounds in the court concerned at the time of discharge.

It is the contention of learned counsel for the petitioners that the order dated 27.06.2018 passed by this Hon'ble Court was communicated to the court below, however the records of the case was transferred on 30.06.2018 to the transferee court where on the very first date i.e. 03.07.2018, the learned transferee court ordered the office to issue a non-bailable warrant against the petitioners fixing on 03.10.2018 as the next date.

Learned counsel for the petitioners submits that in the given facts and circumstances, there was no reason for the court to take a view that these petitioners will not appear in the court below. A reasonable time was required to be granted to the petitioners to appear, however the learned court below acted in haste and issued non-bailable warrant against the petitioner.

It is a case arising out of a complaint case in which



at the first instance summons were ordered to be issued therefore while issuing non-bailable warrant in addition to summon the court was required to record reasons in terms of Section 87 of the Code of Criminal Procedure.

On the other hand learned Additional Public Prosecutor for the State submits that after withdrawal of the criminal miscellaneous applications the petitioners were supposed to appear in the court below in accordance with law.

Having heard learned counsel for the parties and on perusal of the records, this court finds that within one week from the date of withdrawal of the criminal miscellaneous applications, the court below has ordered to issue non-bailable warrant against the petitioners and no reason has been recorded in the order dated 03.07.2018 by which non-bailable warrant has been issued against the petitioners. This court also finds that at the stage of cognizance the court had ordered to issue summons only, thus while issuing non-bailable warrant of arrest in addition to summons the court below was required to record reasons in terms of Section 97 of the Cr.P.C.

In the aforesaid facts and circumstances, the issuance of non-bailable warrant is unsustainable in the eye of law, therefore the order dated 03.07.2018 passed by Ex-Munsif-cum-Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1490(C) of 2015 is set aside.

The non-bailable warrant issued by virtue of the



order dated 03.07.2018 shall not be executed against the petitioners. The petitioners undertake to appear in the court below in accordance with law on 25th October, 2018. If the petitioners would fail to appear in the court below on the next date, the court below shall proceed with the matter in accordance with law.

Accordingly, this application stands allowed.

(Rajeev Ranjan Prasad, J)

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