

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10801 of 2017

Arising Out of PS.Case No. -88 Year- 1990 Thana -BRAHMPURA District- MUZAFFARPUR

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Raman Khurana @ Ram Lal Khurana, son of Sri Kishun Lal Khurana, resident of Chandra Chowk, Naya Tola, Police Station- Kazi Mohammadpur in the district of Muzaffarpur.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Narayan Sharma, Advocate

For the State : Mr. Khurshid Anwar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-01-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing the order dated 01.10.2016 passed by the learned Additional Sessions Judge-1, Muzaffarpur in Cr. Revision No.126 of 2016 by which the prayer to set the order dated 05.04.2016 passed by the learned Additional Chief Judicial Magistrate, Muzaffarpur in Brahampura P.S. Case No.88 of 1990 declaring the petitioner as absconder and fixing for evidence under Section 299 of the Cr.P.C. has been rejected.

2. It is submitted by the learned counsel for the petitioner that the petitioner was made accused in Brahampura P.S. Case No.88 of 1990 which was registered on 03.09.1990 inter alia under Sections



468, 469, 471 and 472 and 120B of the I.P.C. He was granted anticipatory bail vide order dated 11.11.1993 passed by this Court in Cr. Misc. No.10795 of 1993 whereafter he appeared before the learned Additional Chief Judicial Magistrate, Muzaffarpur on 10.12.1993 and furnished sureties and bail bonds. The investigation of the case was kept pending for sufficiently long time and charge-sheet was submitted in the case on 20.02.2003. On receipt of the police report, vide charge-sheet no.34 of 2003, the learned Additional Chief Judicial Magistrate, Muzaffarpur took cognizance of the offence on 16.09.2003 against the petitioner and ordered for issuance of summon against him fixing 07.11.2003 as the next date. Since then, no summon was served upon the petitioner and in absence of compliance report, the Court of Magistrate issued non-bailable warrant of arrest against the petitioner and, thereafter declared him proclaimed absconder. He submitted that the orders passed by the learned Additional Chief Judicial Magistrate, Muzaffarpur are bad in law and revisional court ought to have interfered with that order. He contended that it is well settled in law that in absence of service report of summon, the court should not issue bailable or non-bailable warrant of arrest against the accused, who has already been granted bail in course of investigation.

3. On the other hand, learned counsel for the State



submitted that it is an old matter and the petitioner is deliberately avoiding his appearance before the court. He submitted that from perusal of the order-sheet of the court of Additional Chief Judicial Magistrate, Muzaffapur it would transpire that all efforts were taken in order to secure the appearance of the petitioner after submission of the charge-sheet and as the petitioner failed to appear before the court, the court was left with no other option but to take coercive steps against him in order to secure his appearance.

4. In reply, learned counsel for the petitioner submitted that it is wrong to allege that the petitioner deliberately evaded to appear before the court. He submitted that in view of the law laid down by the Supreme Court in **Free Legal Aid Committee, Jamshedpur vs. State of Bihar [1988(SC) 35]**, the petitioner was not required to appear before the court after grant of bail during investigation till summons were served upon him after submission of the charge-sheet. He submitted that the petitioner is ready to appear before the court on or after 15th January, 2018 on any date as per direction of the court.

5. I have heard learned counsel for the parties and perused the record. I find substance in the submissions of the learned counsel for the petitioner.

6. The Supreme Court in the case of **Free Legal Aid Committee, Jamshedpur** (supra) categorically held that once an



accused is granted bail during investigation of the case, he is not required to appear before the court till the submission of the charge-sheet. It is also well settled that once charge-sheet is submitted by the police on completion of investigation, the court must ensure that summons are served upon the petitioner before proceeding to the next stage.

7. From perusal of the order sheet of the court of Magistrate, it would be evident that though summons were issued, the compliance of the same was never reported to the court.

8. In that view of the matter, the impugned order dated 01.10.2016 passed by the learned Additional Sessions Judge-1, Muzaffarpur in Cr. Revision No.126 of 2016 cannot be sustained. Accordingly, it is set aside. Consequently, the orders by which warrant of arrest has been issued against the petitioner and the order dated 05.04.2016 by which he has been declared absconder by the learned Additional Chief Judicial Magistrate, Muzaffarpur in Brahampura P.S. Case No.88 of 1990 are also quashed. He shall be allowed to continue on bail on the basis of bonds and sureties furnished earlier.

9. However, as the petitioner is fully aware about the order of cognizance and summoning against him, as per his own undertaking, he is directed to appear before the concerned Magistrate



on 15th of January, 2018. No notice in this regard shall be required to be issued. In case, the petitioner fails to appear before the concerned court on 15th January, 2018, the learned Magistrate would be at liberty to cancel his bail and take all coercive steps in order to secure his appearance.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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