

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52480 of 2018

Arising Out of PS.Case No. -2024 Year- 2012 Thana -PATNA COMPLAINT CASE
District- PATNA

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1. Sumeet Kumar @ Mr. Sumit, S/o Mr. J.P. Arora, Resident of H No.- 62, Zone-H 4/5 Suvidha Kunj, Pitampura, P.S.- Ranibagh, Delhi- 110034.

2. Vikas Jain, S/o Mr. V.K. Jain, B-1/118, 2nd Floor, Block-B1 Paschil Vihar, P.S.- Paschim Vihar, New Delhi- 110063.

3. Rahul Sharma, S/o Mr. P.L. Sharma, Resident of H No. 713, Block A, Sushant Lok 1, P.S.- Sushant Lok, Gurgaon- 122002, Haryana.

4. Mr. Rajesh Agarwal, S/o Late S.K. Agarwal, Resident of B-312, Saraswati Vihar, P.S.- Saraswati Nagar, Delhi- 110034.

5. Bharat Singh Malik, S/o Late Daryao Singh Malik, Resident of 849, South Civil Line, Muzaffar Nagar, P.S.- Civil Line, U.P., all working at Micromax Infomatics Ltd. having registered office at 21/14A, Phase B, Naraina Industrial Area, P.S.- Naraina, New Delhi- 110028.

.... Petitioners

Versus

1. The State of Bihar.

2. M.S., J.S.M. Marketing Pvt. Ltd., through its Director, Mr. Jugal Kishore having its office at 2nd Floor, Sri Ram Bhawan, Exhibition Road, P.S.- Gandhi Maidan, District- Patna.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushik

For the Opposite Party/s : Mr. Amit Kumar Rakesh

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2. 25-09-2018

Heard learned counsel for the petitioners and
learned counsel representing the State.

The petitioners in the present case are seeking
quashing of the order dated 16.11.2017 and 03.07.2018
passed by learned Judicial Magistrate, 1st Class, Patna in
Complaint Case No. 2024(C) of 2012 by which the learned
Magistrate has been pleased to issue non-bailable
warrant and thereafter process under Section 82 Cr.P.C.



respectively.

Learned counsel for the petitioners submits that the impugned orders are not the speaking orders and they do not contain any reason, therefore these orders are liable to be set aside.

It is submitted that the learned Magistrate while issuing non-bailable warrant or the process under Section 82 Cr.P.C. has not recorded her satisfaction to the extent that these petitioners are absconding and would not appear before this court and if the satisfaction has not been recorded and the orders issuing non-bailable warrant of arrest and process has been issued, the orders are liable to be quashed.

On the other hand, learned counsel representing the State submits that the submission of learned counsel representing the petitioners has a fallacy inasmuch as it does not take care of the materials available on the record which would show that these petitioners had knowledge of the present proceeding, they had filed application under Section 205 Cr.P.C. to dispense with their personal appearance, however the said application under Section 205 Cr.P.C. was rejected earlier sometime in the year 2015 itself.

It is further submitted that once the 205 Cr.P.C. application was rejected, the petitioners had to



seek their remedy in accordance with law, but they neither challenged the order under Section 205 Cr.P.C. rejecting their application nor they surrendered in the court below seeking grant of regular bail.

It is in these conditions when the record before the learned Magistrate was showing that these petitioners were evading appearance in the court below for about two years after rejection of their application under Section 205 Cr.P.C., the learned Magistrate decided to issue non-bailable warrant of arrest. Even after issuance of the non-bailable warrant when the petitioners did not appear and remained evading their appearance in the court below ultimately a process under Section 82 Cr.P.C. has been issued. It is thus submitted that the contention of learned counsel for the petitioners that the order impugned in the present application are not speaking orders cannot be accepted.

Having heard learned counsel for the parties and on perusal of the records, this court is of the considered opinion that these petitioners were fully aware of the ongoing proceeding in the court below. They had filed 205 Cr.P.C. application seeking dispensation of their personal appearance in the court below, but the said application was rejected in the year 2015 itself. The said order was not challenged, and in the year 2017 once



again they filed a fresh application under Section 205 Cr.P.C. which was also rejected on 01.09.2017. Still the petitioners did not appear on the next date fixed in the matter and in these conditions the learned Judicial Magistrate, 1st Class, Patna decided to issue non-bailable warrant and thereafter the process under Section 82 Cr.P.C.

In the opinion of this court, the conditions prescribed under Section 87 Cr.P.C. for issuance of non-bailable warrant on addition to summons were fully satisfied in the present case. The learned Magistrate has rightly proceeded to issue warrant of arrest non-bailable and then process under Section 82 Cr.P.C. because the petitioners were not putting appearance in the court below.

No illegality or infirmity could be found in the impugned order, therefore, this application is dismissed.

(Rajeev Ranjan Prasad, J)

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