

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.2825 of 2017

Arising Out of Complaint Case No. – 1699/2015, T.R. No. 1233/2016, District- GAYA

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1. Pushpa Srivastava, W/o Tribeni Kant Sinha,
2. Tribeni Kant Sinha, S/o Late Devi Prasad Verma,
Both R/o Dulli Ghat, Diwan Mohalla, P.S.- Khajekalan, Patnacity, District- Patna.

.... Petitioners

Versus

1. The State of Bihar, through the Principal Secretary, Home Dept. Patna, Bihar.
2. The Senior Superintendent of Police, Gaya.
3. The City S.P., Gaya.
4. The City S.P., Patna.
5. Station House Officer, Khajekalan Police Station, District- Patna.
6. Smt. Khushbu Kumari, W/o Sh. Harendra Kumar Srivastava, D/o Sh. Amresh Kumar Verma, Both R/o Dulli Ghat, Diwan Mohalla, P.S.- Khajekalan, Patna City, District- Patna. presently residing at Mohalla New Bageshwari Colony, P.S.- Dhelha, District- Gaya.

.... Respondents

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Appearance:

For the Petitioner/s : Mr. Jagannath Singh, Advocate.
For the Respondent/s : Mr. Md. Nadim Seraj, GP 5.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 09-01-2018

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

2. The petitioners are aggrieved by order dated 05.01.2017 and 22.06.2017 passed by learned A.C.J.M. VII, Gaya by which in connection with Complaint Case No. 1699/2015, T.R. No. 1233/2016 an order has been passed to issue processes U/S 82 and 83 of the Code



of Criminal Procedure against the son of the petitioners, who is absconding.

3. Learned counsel for the petitioners submits that in a case U/S 498A IPC which has arisen out of the Complaint Case filed by their daughter-in-law, the petitioners have also been made accused and they are on bail but the son of the petitioner is absconding, therefore, the court below has taken steps by issuing processes U/S 82 & 83 Cr.P.C. He further submits that so far as issuance of processes is concerned, he shall have no grievance if it is executed against the absconding accused, but in the garb of the said processes, the police is harassing them and is threatening to enter into the residential house of these petitioners which has been constructed by them from their self-acquired income and, in no way, the absconding accused, who is the son of these petitioners, got any concern in respect of those properties by virtue of his birth in the family.

4. In sum and substance, the submission is that if the residential house in which these petitioners are residing is their self-acquired property, the processes cannot be executed by executing the same against the residential house of the petitioners.

5. Learned counsel for the State is present and does not dispute the propositions of law which have been set out by the learned counsel for the petitioners for consideration. He, however, submits



that whether the residential house is a self-acquired property of the petitioners would be a question of fact.

6. Considering the facts and circumstances of the case and upon hearing the parties, I am of the considered opinion that the petitioners should approach the court below by filing an application together with the documents of title of the house in question for taking a *prima facie* view by the court below where the case is pending. If the court below is *prima facie* satisfied from the documents of title produced before it that the property in question, where these petitioners are residing which is said to be in the nature of a residential house, has been acquired by these petitioners by way of self-acquired asset standing in their own name, the court will pass an appropriate order to ensure that the petitioners' residential accommodation is not disturbed and no harassment is caused to them only because one of the accused, who happens to be the son of these petitioner, is absconding. It is well settled that no vicarious liability will be fasten against these petitioners for the reason that their son is absconding.

7. The petitioners shall file an appropriate application within a period of two weeks from today in the court below and the court below shall pass an appropriate order thereon within next 15 days after hearing the parties. Till then, the processes U/S 82 & 83 Cr.P.C. shall not be executed against the residential premises of these



petitioners where they are presently living.

8. The application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.01.2018
Transmission Date	09.01.2018

